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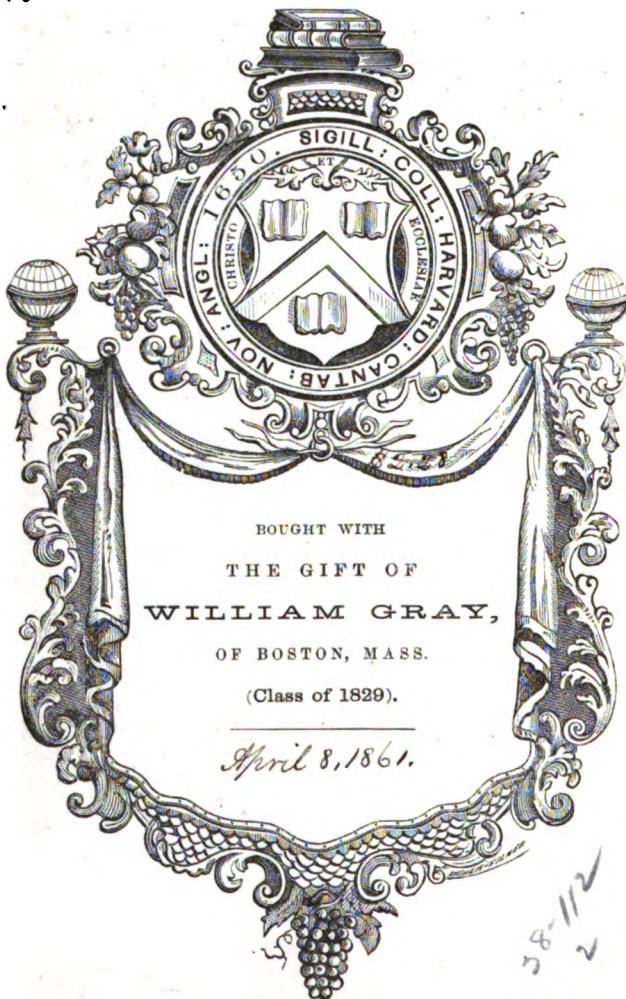
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OBSERVATIONS
ON THE STATUTES
OF THE
REFORMATION PARLIAMENT

IN THE REIGN OF
KING HENRY THE EIGHTH.

BY
ANDREW AMOS, ESQ.
AUTHOR OF THE RUINS OF TIME,
CONSTITUTIONAL HISTORY OF KING CHARLES II. &c.

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CONTENTS.

INTRODUCTORY CHAPTER	PAGE 1
--------------------------------	-----------

What the Reformation Parliament performed. Authorship of its Statutes. The King. Temporal Peers. Spiritual Peers. House of Commons. The Speaker. Preambles of Statutes. Reasonings. Facts. Convictions. Flattering and insidious Preambles.

CHAPTER II.

THE ROYAL SUCCESSION	12
Succession Act (25 Hen. VIII. c. 22) :—	
The Preamble	12
The King's Divorce	15
Prohibited Degrees of Marriage	22
Entail of the Crown	24
Treasons and Misprisions of Treason	25
The Oath	31
Punishments	37

CHAPTER III.

PARLIAMENT	38
Constitutional Limits transgressed	38
Attainder of the Nun of Kent	39
Attainders of Sir Thomas More	46
" of Bishop Fisher	49
Miscellaneous Attainders	52
Attainder, with boiling	
" cutting off hands	56
Parliamentary Pardons	56
General Pardons	57
Pardons of the Clergy	57
" Laity	58
" Bishop of Norwich	63
Miscellaneous Pardons	63
Delegated Legislation	64

	PAGE
CHAPTER IV.	
REVENUE	66
Remission of Loan	67
Subaidy Act	70
Dissolved Monasteries	71
Royal Exchanges	73
CHAPTER V.	
AGRICULTURE	74
Flocks of Sheep	74
Hemp and Flax	79
Crows	80
CHAPTER VI.	
THE POOR	83
Vagrants	84
Wages	90
Unlawful Games	92
Villenage	94
CHAPTER VII.	
TRADE	97
Foreign Trade	97
Home Trade	104
Markets	108
CHAPTER VIII.	
PROPERTY	114
Uses	114
Common Recoveries	122
Terms for Years	126
Statutes Staple	128
Superstitious <i>Uses</i>	128

CONTENTS.

v

PAGE

CHAPTER IX.

CIVIL PROCEDURE	133
Juries and Verdicts	133
Costs and Pauper Suits	138

CHAPTER X.

CRIMES AND PUNISHMENTS	140
Treasons	141
Felonies	152
Gypsies	154
Poachers	157
Heretics	159

CHAPTER XI.

CRIMINAL PROCEDURE	165
The Star Chamber	166
Benefit of Clergy	170
Sanctuary	175
Appeals and Restitution	179
Trials for Piracy	180
Torture	183

CHAPTER XII.

LOCAL IMPROVEMENTS	187
Bridges	187
Sewers	188
Gaols	193
Buildings	194
Paving	198
Harbours	200
Highways	202
Rivers, The Thames	203

CHAPTER XIII.

CROSS-BOWS AND HANDGUNS	205
-----------------------------------	-----

	PAGE
CHAPTER XIV.	
APPAREL	208
CHAPTER XV.	
WALES	219
ROYAL FRANCHISES	225
CHAPTER XVI.	
THE SUPREMACY, AND THE ANGLICAN CHURCH	229
Antecedents	230
Papal Supremacy and Anglican Church during the first twenty years of Henry's reign. Connexion between ecclesiastical reforms and Henry's quarrel with the Pope. Evocation of King's cause to Rome. Summoning of the Reformation Parliament. The King's views regarding the inclinations of the English Clergy towards the Pope. Division of the subject into the statutes of the seven consecutive Sessions of the Reformation Parliament.	
Session I. A.D. 1529	234
Sanctuary. Fees upon Probates. Mortuaries. Clerical Pluralities, Non-Residence, Farming, Trading, Licenses, Chaplains, Dispensations.	
Session II. A.D. 1530—1	243
Proctors and Pardoners. <i>Præmunire</i> against the Clergy. Chaucer's Pardoner.	
Session III. A.D. 1531—2	245
Benefit of Clergy. Citations out of dioceses. <i>Light literate</i> Summoners. Chaucer's Summoner. Trustees for Obits. Will of Henry VIII. Prisons of Ordinaries. <i>Annates</i> of Archbishops and Bishops. Delegated legislation.	
Session IV. A.D. 1532—3	256
Preliminary Occurrences. Appeals to Rome. Appeal of Queen Catherine. The king's deceits.	
Session V. A.D. 1533—4	262
Preliminary occurrences. Heresy. Speaking against the Bishop of Rome. Open Courts. Chaplaincies with non-residence. Royal Assent to Ecclesiastical Canons. Autocracy over the Canon-law. Commission of Delegates. Convocation misrepresented. <i>Congé d'élire</i> . Cranmer's appointment by the Pope. <i>Cuffing</i> of statutes. Antique seal. Papal dispensations, Peter-pence, and petty exactions. Visitation of Monasteries.	

	PAGE
Session VI. A.D. 1534	279
The Pope's Sentence, Erasure of his name. Act of Supremacy. Its assumed declaratory character. Its advantages and defects. Act assigning a false tenor to the oath declined by Sir Thomas More. First-Fruits and Tents. <i>Valor Ecclesiasticus</i> . The King's Books. Sanctuary excluded in treason. Attainders of Abbots made to include Confiscation of Abbeys. Suffragan Bishops. Busy Bishops.	
Session VII. A.D. 1535—6	292
Commission for revising Ecclesiastical Law. Absence of Report. Sanctuary. Collection of Tithes enforced by Ecclesiastical Court. Divine Right of Tithes. Selden's Submission. Court of Augmentations. Dissolution of the smaller Monasteries.	
<i>Purport</i> of the Act of Dissolution. Generality. Pretexts <i>ad faciendum populum</i> . Hospitality. Agriculture. Pensions. Revenues of Abbeys how ascertained. Twelve inmates. Temptations to Visitors for misrepresentation. Interest of Cromwell in the suppression of Monasteries. The King's Offering at the <i>Rood of Grace</i> . Cromwell's Memorandum Book. " <i>My Self for Launde</i> ." Letter of Layton comparing himself to Simeon. Correspondence of Reports of Visitors with their letters. Confirmation of Reports by Parliament.	
<i>Principles</i> of the Act of Dissolution. Depravity of the Monks. Benefits derived from Abbeys. Latent motives. Cupidity for Plunder. Relief from taxation. Vicarious gratitude. Hostility of the Monks. Modern principles. Free alienation of land. Excessive property vested in the Clergy. Infraction of the rights of property.	
<i>Consequences</i> of the Act of Dissolution. Pilgrimage of Grace. Protestant title to lands. Pauperism. Land an article of commerce. Extinction of Villenage. Trinity College, Cambridge.	
APPENDIX	317
Sir Thomas More's Indictment	319
Queen Anne Boleyn's Indictment in Middlesex	325
Queen Anne Boleyn's Indictment in Kent	331
Observations on the Indictments preferred against Queen Anne Boleyn	333

INTRODUCTORY CHAPTER.

THE Reformation Parliament of Henry VIII. achieved the memorable exploit of demolishing the Pope's Supremacy in England. It has, moreover, left traces that are discernible in the actual constitution of the country, civil as well as ecclesiastical, and in the present laws respecting property, crime, and miscellaneous branches of jurisprudence. It has bequeathed, also, a warning to posterity, in various examples of the flagrant abuse of legislative power. Its Acts, in the course of seven sessions, contain many curious illustrations of the manners and opinions of our ancestors.

Before entering upon a particular examination of these topics, it may be useful to make some preliminary inquiry concerning the authorship of the Acts which are the subject of the ensuing chapters, with a view of ascertaining how far they may be regarded as exponents of national sentiments, or as instruments for effecting the King's designs, and screens for his despotism. Some preliminary notice may, also, be advisable of the general complexion of the Preambles of statutes passed in the reign of Henry VIII.

With regard to the first of the three estates of the realm, the *King*,—all eminent authorities on constitutional law lay it down as a rule now established, that the King must not take notice of proceedings that are pending in either House; a custom of Parliament essential to the independence of its deliberations. We shall find, in the following chapters, instances of Henry VIII., during the Reformation Parliament, summoning the Speaker of the House of Commons, with a select number of Members, and

scolding them for the conduct which that branch of the Legislature were pursuing. On a complaint in the same Parliament, made by the Commons, of the speech of a Bishop delivered in the House of Lords, the King summoned him to Whitehall, and, after an explanation, "accepted," as Hall writes, "of his excuse." The same chronicler mentions that the King had not been "well content with the saying of the Bishop." A Bill of the Lower House, in this Parliament, not finding an easy passage with the Lords, the King caused eight Peers and eight of the Commons to meet in the Star Chamber; where, as Hall relates, "the temporal lords took part with the Commons against the spiritual lords, and, by force of reason, caused them to assent to the Bill." The Conference resulted, as might have been anticipated, agreeably to the King's known inclinations.

The King appears to have assumed, in this Parliament, as will be seen in the following chapters, on various occasions, the initiative of law-making in a manner not always confined within present constitutional limits. Several Acts purport to have originated in the King's "goodly and gracious disposition in calling to his blessed remembrance." On one occasion, as we learn from a contemporary writer, the King personally delivered to the Commons of this Parliament a Bill against vagabonds, of his own concocting: on another occasion, he spoke to the Commons through their Speaker, at an interview, of a Bill, as being *his*, which he had *sent*. On two occasions the Lord Chancellor personally visited the House of Commons for the purpose of influencing the Members in favour of the King's designs. The King caused the oaths of the Bishops to himself and to the Pope to be read in the Lower House, and after animadverting on their antagonism to the Speaker, required the Commons to "invent some order, that we be not thus deluded of our spiritual subjects;" the matter had not been broached to the House of Lords.

The King derived influence over parliamentary measures, and incurred corresponding moral responsibility, from the circum-

stance of being arbiter between religious factions that were incensed against each other. His share in the measures against the Pope and the Anglican Church receives some illustration from his dismissal of Wolsey, and the appointment of laymen for Chancellors. But it is scarcely necessary to travel beyond the intrinsic evidence afforded by the leading Acts of Parliament at every period of Henry's reign, to infer that their parentage is less that of deliberative assemblies than of an individual author, whose dictates and expressions have a marked peculiarity of sentiment and tone.

The *House of Lords*, at the first meeting of the Reformation Parliament, consisted of forty-four temporal Peers, two Archbishops, sixteen Bishops, two Guardians of spiritualties, twenty-six Abbots, and two Priors. Twenty-five temporal Peers sat for the first time at the assembling of the Reformation Parliament. A considerable number of these were newly created, others may have arrived at full age in an interim of seven years, in which case they would recently have been the King's Wards. The House was not too numerous for individual persuasion or intimidation, whilst it sufficed for imparting to Acts of Parliament a constitutional colour.

A *Temporal Peer* of this Parliament would have had a brilliant prospect open to him from royal favour; for Henry pursued a different policy from that of his Father, who depressed the nobility. Sir Thomas More writes on the occasion of the coronation of Henry VIII.

Despectusque diu Magnatum nobilis Ordo
Obtinuit primo pristina jura die.

The streams of royal favour, under Henry VIII., carried with them to Peers, besides such rewards as have not at this day lost their allurements, marriages of wealthy heirs and heiresses, gifts out of the alienable and yet spacious royal domains or recent princely confiscations, and expectations of a speedy participation

in the incalculable spoils of plundered Monasteries. But if the Peer cast his eyes in any other direction than that of royal favour, what avenues could he discover, for a person of his rank or for his family, either to wealth or honour? One vista, indeed, would attract his notice, which exhibiting to the mind's eye the Shade of Wolsey bidding a long farewell to all his greatness, and the headless forms of Buckingham, Fisher, and More, might have convinced him, how exalted station, and the laws of the land, afforded no refuge from the frown of the King¹.

The *Spiritual Peers* did not, in fact, avail themselves of their numerical strength to oppose Henry's measures against the Pope and the Anglican Church. They were exposed to sore temptations of a mundane character which were calculated to weaken their opposition. It may be presumed, indeed, that, during twenty years, Henry, in the appointment of Bishops, had not disregarded, among their qualifications, a disposition to render him Parliamentary services. In his appointments to the two Archbishoprics and ten Bishoprics, which fell vacant during the Reformation Parliament, this precaution would surely not have escaped his attention. A crosier was then a very inadequate type of Episcopal duties. Commendams, translations, dispensations, even embassies, rangerships, and a variety of secular appointments, were capable of being showered on the mitred head.

¹ Besides direct gifts from the Crown, the courtiers received annuities out of the Sees of Bishops. By an Act of the second session of this Parliament, an annuity was confirmed that had been granted out of the See of Winchester to the Duke of Norfolk as master of Wolsey's *game*, and another to the King's Chamberlain, Lord Sandes, as Constable of the Castle of Farnham, besides five other annuities. From another Act passed by this Parliament annuities were confirmed out of the See of Norwich to the Duke of Suffolk, Earl of Sussex, and Lord Fitz-walter. These annuities, if they did not originate in royal favour, were confirmed by it. That this view of the peers *a priori* agrees with their conduct *a posteriori*, see Hallam, Vol. I. p. 47. Among other things he observes, that "the peers yielded to every mandate of the imperious will of Henry VIII.; they bent with every breath of his capricious humour;" and again, "We find noble statesmen supporting all the religions of Henry, Edward, Mary, and Elizabeth, constant only in the rapacious acquisition of estates and honours from whatsoever source."

Abbots had, also, many of them, received their appointments from Henry. They were not left altogether without hopes of preferment; thus the Abbot of Tavistock and his successors were made Peers; an Abbot was promoted to the bishopric of Norwich. But, in general, they must have perceived that a storm was impending over their monasteries, which could not be averted or mitigated otherwise than by submission.

The abject spirit of Bishops and Abbots at this period was manifested in their kissing the rod which unjustly and mercilessly corrected them for having unwillingly yielded obedience to Wolsey's Legatine authority. The Attorney-General was indeed ever ready with a prosecution for *præmunire* on account of some alleged excess of refractory Bishops in their ecclesiastical courts. Bishop Fisher's head on London Bridge was a better lesson to the Prelacy of non-resistance than any homily; the foresight of a similar spectacle on the Tor of Glastonbury might have not unnaturally presented itself to the imaginations of the twenty-six Abbots and two Priors who were summoned to the Reformation Parliament.

The *House of Commons*, during the Reformation Parliament, consisted of two hundred and ninety-eight Members; they were returnable according to such remarkable disproportion for the several Counties, as to indicate a division corresponding to the limits of royal influence, rather than the work of time. As to Parliamentary Elections, we find many instances, throughout the reign of Henry VIII., of the direct interference of the Government, and of Bishops or of Peers connected with the Court who were possessed of extensive domains. We read, for example, a letter in Ellis's *Collections*, from Lord Dacre of the North to Wolsey, noticing an order from the King for his brother to be elected a Knight of the shire of Cumberland, and begging to have him excused; he beseeches that "it would like his Grace to suffer Mr Heneage, or such one of your servants to be in his room, as your Grace shall nominate." Mr Hallam adduces, from the Cotton

MSS., a letter from Sir Robert Sadler informing a person that the Duke of Norfolk had spoken to the King, who was well content he should be a burgess for Oxford, and that he should "order himself in the said room according to such instructions as the said Duke of Norfolk should give him from the King." Of the Reformation Parliament in particular, the contemporary chronicler, Hall, a zealous Protestant, writes, "the *most* part of the Commons were the *King's servants*." In the session of Parliament next preceding the meeting of the Reformation Parliament, there arose a debate upon a subsidy which had been demanded of unprecedented amount; a contemporary letter, in Ellis's *Collections*, communicates to the Earl of Surrey that, "yesterday, the *more* part being the King's Council, the King's servants, and gentlemen, gave the King his subsidy," and that the minority had been "spoken with, and made to say *yea*, it may fortune, contrary to their heart, will and conscience."

With regard to *disputed elections*, the Sheriffs who made the returns to writs were virtually appointed by the Crown; they were especially responsible to the Star Chamber for what that court, composed of high officers of state, should adjudge undue returns. It would appear, that, at the period under consideration, as Parliamentary writs issued out of Chancery, so the Chancellor decided on the validity of returns to them; a power, which, in bad hands, was paramount to that of election; the hands were always those of an officer of state, and, during a considerable part of the Reformation Parliament, of Audley. By such regulations a candidate in favour with the Government had nothing to fear, if his cause were just, and might never have despaired of success, if it were the reverse.

If Members of the House of Commons might not look up to so high a zenith as the Peers for their rewards of Parliamentary services, yet, on the other hand, their horizon was more expanded, and embraced objects that were incapable of being grasped by Peers. Many prizes, indeed, were of the same nature as those

by which Members of Parliament are dazzled in the present day, but their possession was more exclusively a consequence of royal favour. They were rarely sought for by the circuitous road of opposition to Government. Modern statutes for the exclusion of officers and pensioners of the Crown would have emptied most of the benches in the Parliaments of Henry VIII. Unknown to our times are the dispensations granted by Henry from a multitude of penal statutes, his licenses, and monopolies: besides a variety of employments of honour and dishonour, the offer of which might be sneered at in the present day, but might have been acceptable to Members of Parliament, who, by a statute of the realm, were prohibited from quitting their duties before the termination of a Session, under a penalty of forfeiting their wages.

The Speakership, in the reign of Henry VIII., was an important instrument of Government for the management of the Lower House of Parliament. The Speaker not only owed his acceptance to the King, but, virtually, his appointment; it being customary that he should be proposed by a Member of the King's Council. His speech to the King upon his presentation usually bore testimony to the authorship of his creation. Speaker More compared Henry VIII. to Hannibal, Speaker Rich deemed him more aptly comparable to Solomon, Samson, and Absalom. We are told by Sir Thomas Smith (writing early in the reign of Elizabeth) that it was the Speaker's office, when any Bill was read, "as briefly and as plainly as he may, to declare the effect thereof to the House." In the Parliament in which Sir Thomas More was Speaker, we find that he rendered acceptable service to the Government in furthering a Bill for a Supply. Wolsey, as appears from the published *State Papers*, thus writes to the King upon the subject at the close of the Session: "And where it hath been accustomed that the Speakers of the Parliaments, in consideration of their diligence and painstaking, have had, though the Parliament hath been right soon finished, above the

£100 ordinary, a reward of £100 for the better maintenance of their households, I suppose that the faithful diligence of Sir Thomas More in all the causes treated in the last Parliament as well as in your subsidy, hath been such that no man could better deserve the same than he has done. Ascertaining that I am the rather moved to put your Highness in remembrance thereof, because he is not the most ready to speak thereof in his own cause."

The sequel of this application we learn from the following letter of Sir T. More to Wolsey (*the Wether*), in Ellis's *Collections*: "Furthermore, hit may lyke your good Grace to understand, that, at the contemplation of your Grace's lettres, the King's Highnes is graciously content that byside the hundred poundes for my fe for th' office of the Speaker of his Parlement, to be taken at the receipte of his Exchequer, I have one other hundred poundes owt of his cofres by th' ands of the tresorer of his chambre; wherefore in moost humble wise I beseech your good Grace that as your graciouse favor hath obteigned hit for me, so it may lyke the same to wryte to M^r Wiatt that he may deliver hit to such as I shall send for it: wherby I and all myn, as the manyfold goodnes of your Grace hath all redy bound us, shal be dayly more and more bounden to pray for your Grace, whom our Lord longe preserve in honor and health.

"At Estemstede, the xxvjth day of August."

Audley was the first Speaker of the Reformation Parliament. In the first year of his Speakership he was appointed attorney for the Duchy of Lancaster, and, in the second, he was made King's Serjeant, a day or two after he had assumed the coif. He experienced a splendid reward of royal favour, and one edifying to future Speakers, in being elevated to the Chancellorship. And if, in his office of Speaker, as in the other public functions discharged by him, he sustained, as he himself wrote to Cromwell, "great damage and infamy in serving the King's

Highness," he obtained, as he expresses it, "a restoration to honesty and commodity" by a grant of the dissolved Monastery of Saffron Walden.

Next, with regard to the general character of the *Preambles* of Statutes passed in the reign of Henry VIII. It may be observed that the Preambles of this reign are prolix, diffuse, and redundant beyond all former example, as if, apparently, to guard the enacting clauses from misrepresentation of motives rather than misinterpretation of texts. They, generally, consist of reasonings and facts upon which it was professed that the Statutes were grounded; they exhibit, with greater probability of truth, the lights in which it was desired that the nation should view them, without conjectures to the right hand or to the left.

With regard to the Parliament's *reasonings*, great allowance is to be made for the imperfection of political knowledge at the period, for the laws having been made for a population not exceeding in number five millions, for differences in the education and manners of society, and for a variety of temporary circumstances which may render the wisdom of one age a laughing-stock for the next. Nevertheless, it may sometimes strain our belief of the stupidity and ignorance of our ancestors to imagine that they were converts to the Parliamentary logic of the reign of Henry VIII.

With regard to the *facts* detailed in Preambles, their veracity will derive no support from a coincidence with State Papers, such as confessions, depositions, verdicts, judgments, reports, provided both the preambles and such documents should appear to be the productions of the same laboratory, the handiwork of the same craftsmen. Such a coincidence might be anticipated, if the King, by his subservient agents, stretched racks, examined prisoners, transcribed and read evidence, empanelled and reformed the pannels of juries, directed and terrified the twelve, pronounced criminal and ecclesiastical judgments, wove the tissue

of vilifying reports, and, afterwards, summed up the results in Preambles.

With regard to any inferences to be drawn from the fact of *convictions* stated in Preambles, there is an objection to their credibility altogether independent of the questions of their being consistent with law, or their being procured by the instrumentality of Judges, Juries, Law Officers, Commissioners, and Torturers, who were immaculate and undaunted in their several vocations. The legal rules of practice and of evidence, in criminal cases, in the reign of Henry VIII. were so unequal, that a verdict according to law was less conclusive against the accused than the result of a trial by ordeal or battle, which were once constitutional forms of trial, and the latter within living memory. A jury-trial, in the reign of Henry VIII. is a deceptive name, just as a shilling of that King is apt to mislead, from retaining its name through all its stages of debasement. A jury-trial of that reign should never be mentioned, in history, abstractedly, or as if it meant what it now means, but as a bygone and unfair mode of inquiry, and a colourable form of assassination.

Several of the facts stated in the Preambles of this period militate with contemporary testimony of the highest credit; others are at variance with ordinary experience of human nature; some appear to have been used, according to an expression of Lord Coke applied to a Preamble of this Parliament, *ad faciendum populum*. The pleasure and displeasure of Almighty God are employed, like stalking-horses, in the Preambles of Henry's Acts, as freely as if he had stood to the people of England in the same position as Moses to the tribes of Israel.

Lord Coke has mentioned what he calls a "flattering Preamble" of a Statute of Henry VII., every statement of which he endeavours to shew was, to use his expression, *ex diametro* opposite to the enactments which it was made to preface. Such a Preamble may be thought analogous to the metaphor applied

by Butler to Sir Hudibras's courtship, of the sculler who looks one way and rows another; but the prolix Preambles of Henry VIII. may be more aptly characterized by another metaphor applied by Butler on the same occasion, viz. that of the *Canis Vertagus*, or modern Tumbler, a species of sporting-dog, formerly in use, that rolled himself over and over, as if intent on anything but its prey, until the proper moment arrived for springing and seizing.

CHAPTER II.

THE ROYAL SUCCESSION.

THE Royal Succession was a prolific subject of legislation in the reign of Henry VIII. For three of his marriages were declared by himself, with the concurrence of the Lords and Commons, to have been void *ab initio*; two lines of bastard offspring were consequently excluded from the Succession, which, afterwards, were readmitted to it. Besides this, the King was authorized to choose residuary Successors to govern his people, by his Letters Patent, or Last Will.

The Act of the Reformation Parliament respecting the Royal Succession was passed in the twenty-fifth year of the reign (ch. xxii.) An auxiliary Act was passed in the next year of the reign for establishing the identity, in point of *law*, of the oath required by the previous Act with another oath differing from it in point of *fact*. The former Act, passed on the occasion of the King's marriage with Anne Boleyn, consists of the following heads: (1) A Preamble, containing a detail of evils resulting from a disputed title to a throne; (2) an adjudication of the nullity of the King's marriage with Queen Catherine, and of the validity of that with Anne Boleyn; (3) a Declaration of Prohibited degrees of marriage; (4) an entail of the Crown; (5) new treasons and misprisions of treason; (6) an oath for observing and fulfilling the contents of the Act; (7) the punishment of treason.

(1) *The Preamble.*

The Preamble of the Royal Succession Act of the Reformation Parliament is as follows: "In their most humble wise

shewn unto your Majesty your most humble and obedient subjects, the lords spiritual and temporal, and the commons in this present Parliament assembled,—That since it is the natural inclination of every man gladly and willingly to provide for the surety of both his title and succession, although it touch only his private cause, we, therefore, most rightful and dreadful Sovereign Lord, reckon ourselves much more bound to beseech and instant your Highness (although we doubt not of your princely heart and wisdom, mixed with a naturul affection to the same) to foresee and provide for the perfect surety of both you, and of your most lawful succession and heirs, upon which dependeth all our joy and wealth, in whom also is united and knit the only sure true inheritance and title of this realm, without any contradiction ;—Wherefore we, your said most humble and obedient subjects, in this present parliament assembled, calling to our remembrance the great divisions which, in times past, have been in this realm, by reason of several titles pretended to the imperial crown of the same, which, sometimes, and, for the most part, ensued, by occasion of ambiguity and doubts, these not so perfectly declared, but that men might, upon froward intents, expound them to every man's sinister appetite and affection, after their sense, contrary to the right regality of the succession and posterity of the lawful Kings and Emperors of this realm : whereof hath caused great effusion and destruction of men's blood, as well of a great number of the nobles, as of other the subjects, and especially inheritors in the same. And the greatest occasion thereof hath been because no perfect and substantial provision by law hath been made within this realm of itself, when doubts and questions have been moved and proposed, of the certainty and legality of the succession and posterity of the crown. By reason whereof the Bishop of Rome, and See Apostolic, contrary to the great and inviolable grants of jurisdictions, given by God immediately to emperors, kings, and princes in succession to their heirs, hath presumed, in times past, to invest

who should please him to inherit in other men's kingdoms and dominions, which thing we your most humble subjects, both spiritual and temporal, do utterly abhor and detest. And, sometimes, other foreign princes and potentates of sundry degrees, minding rather dissension and discord to continue in the realm to the utter destruction thereof, than charity, equity, or unity, have, many times, supported wrong titles, whereby they might the more easily and facilely aspire to the superiority of the same : —The continuance and sufferance whereof deeply considered and pondered, were too dangerous and perilous to be suffered any longer within this realm, and too much contrary to the unity, peace, and tranquillity of the same, being greatly reproachable and dishonourable to the whole realm."

With regard to this Preamble it may be observed, that the calamities to be apprehended by a nation from a disputed succession to the throne are obvious, and that this truth scarcely required to be enforced by evoking visions of the Pope and foreign potentates, of the effusion of the blood of noblemen and landowners, or by a celestial argument, that the inviolable grants of God immediately to Kings, in succession to their heirs, were at stake. Further, if Cranmer's divorce, and the King's second marriage, were according to law, the succession was not in want of a "perfect and substantial provision." It may seem that the real objects of the Preamble were, by an appalling picture of contingent woes, to withdraw attention from the infirmity of a divorce and marriage which it was sought to corroborate, and to reconcile the nation to a new law of treason, and a new form of oath.

It is remarkable that, in the Preamble, no allusion is made to any dangers to which the nation might be exposed, owing to the want of a *male heir*. And yet nearly the whole of the Peers, and several of the Commons, in a letter to the Pope, complain that he would not relieve the nation from this peril, as thus, "Habemus enim summis virtutibus Principem, indubitata regno

tranquillitatem daturum, si sobolem ex corpore *masculam* nobis reliquerit, *cujus* in vero matrimonio sola spes esse potest." To which argument Pope Clement, in his reply, thus adverts, "*Masculam* autem prolem non vos magis optatis, quam nos Serenitati suæ; atque utinam tanto Regi similes filios, ac non regni tantum, sed et virtutum hæredes haberet Christiana respublica! Sed, pro Deo non sumus, ut liberos dare possimus."

(2) *Divorce and Re-marriage.*

It was enacted by this Statute, that "the marriage theretofore solemnized between your Highness and the Lady Catherine, being before the lawful wife of Prince Arthur your elder brother, which by him was carnally known, as doth duly appear by sufficient proof in a lawful process had and made before the Archbishop of Canterbury, shall be, by authority of this present Parliament, adjudged to be against the laws of Almighty God, and of no effect, and the separation thereof made by the said Archbishop shall be good and effectual."

And it was further enacted, that the marriage between the King and Queen Anne should be "established according to the just judgment of the Archbishop of Canterbury, whose grounds of judgment have been confirmed, as well by the whole Clergy of this realm in both the Convocations, and by both the Universities thereof, as by the Universities of Bologna, Padua, Paris, Orleans, Toulouse, Anjou and divers others, and also by the private writings of many right excellent well learned men.— Which grounds and judgment, together with your marriage solemnized between your Highness and your lawful wife Queen Anne, we your subjects do purely, plainly, constantly and firmly accept, approve, and ratify for good and consonant to the laws of Almighty God, without error or default."

The Archbishop applied to the King for a license to try the cause of the divorce, as though of his own motion, and his official horror of incest. The very form of this license was tinctured

with deception ; for there are extant two letters in the Archbishop's hand, both written on the same day, folded, sealed, and sent to the King, in which he requests a license to try the divorce, and which were obviously dispatched with an intention that the King might select between them the one he preferred for official recognition.

These enactments are built upon arguments *ad verecundiam* ; the Parliament relying, for the divorce and re-marriage, upon Cranmer's sentence, the opinions of the Convocations, and the determinations of the Universities ; with regard to *Cranmer*, he, as appears from an extant letter of his own, well knew, when he undertook the hearing of the cause concerning the divorce, that the King had been married to Anne Boleyn several months in anticipation ; he knew also, as a canonist, that a marriage voidable, and not, *ipso facto*, void, for an impediment on account of consanguinity, could not have been treated, in law, as a nullity at the time when Henry consummated his second nuptials.

Cranmer was the person who had suggested the consultation of the Universities ; it was not, therefore, probable that he would be an unbiased judge upon a question which involved others, viz. whether his own plan had succeeded or failed ; and whether he had been the means of urging the King along courses of expenditure and violence, only to end in disappointment and infamy.

Such circumstances might reasonably have detracted from the credit of Cranmer's sentence at the time of its delivery. With posterity, it is conceived, no favourable opinion will be entertained of his judicial impartiality, upon a view of his obsequious villany as Henry's instrument for his separations from three more Queens.

With respect to the second appeal to modesty, derived from the judgments of the *Convocations*, it appears from a letter of Cranmer, that their determinations were preceded by those of the Universities, though it seems to be represented in the Act that

they were independent of such a slippery foundation. The statement that the *whole* clergy of England had concurred was correct only in the sense of minorities being construed to concur with majorities, as appears from the numbers given in the records published by Rymer. One of the questions proposed to the Convocations was the fact of Prince Arthur's carnal knowledge of Catherine; with regard to which, the depositions published by Lord Herbert are very unsatisfactory, though the presumption from cohabitation, notwithstanding the youth of Prince Arthur, was, at least, as cogent in favour of the affirmative, as Catherine's own oath of the negative¹. It would appear that the witnesses had not been examined before the Convocations, but that their depositions had been taken by the Archdeacon of Buckingham. A dishonourable protest was shewn to the Convocations on the part of the King which he had made before the Bishop of Winchester, in the lifetime of Henry VII., to the effect, that he withheld his consent from a marriage with Catherine, *non obstante* any apparent validity or confirmation, "*per tacitum consensum, mutuam cohabitationem, munerum aut intersignium dationem, seu receptionem, vel alium quemcunque modum jure declaratum.*" To the Upper House of Convocation, in the reign of Henry VIII. the like remarks are applicable as have been made, in the introductory chapter of this work, with regard to the subserviency of Spiritual Peers. Promotion, chaplaincies, dispensations *ad incompatibilitia* contributed to the pliancy of the Lower House.

¹ The Archdeacon of Buckingham reported, that the Duke of Suffolk had deposed, that, at the Shrovetide following the marriage which was in the preceding November, the prince became feeble in body, which grew by his lying with Lady Catherine; and that Sir R. Sacheverell deposed that the people said commonly that it was unfit one brother should marry another brother's wife. The principal point on which the archdeacon laboured was in depositions to the effect, that Prince Arthur, upon the morning after his marriage, said, "I have been in Spain this night." This speech is by one witness represented as part of the *res gesta*, in asking for a cup of ale. Another dictum of Prince Arthur is deposed to by one witness, viz. "It is good pastime to have a wife."

When the Convocations were called upon to answer the King's questions touching his divorce, the enormous penalties inflicted on the clergy for their unwilling acquiescence in Wolsey's *legatine power* were in the course of payment; in fact an additional year was obtained, by the King's grace, for their liquidation. What influence these exactions may have had on the minds of the members of Convocation may be judged of according to what Fuller writes of their effects on that assembly even a few years later: "Yea, in this Convocation nothing was propounded in the King's name, but it passed presently. O the operation of the purge of a *Præmunire* so lately taken by the clergy, (and a hundred thousand pounds tied thereupon!). How did the remembrance thereof still work on their spirits, and make them meek and mortified! They knew the temper of the King, and had read the text, *The lion hath roared, who will not fear?*"

The third piece of testimony to the laws of God was that of the determinations of the *Universities*. Henry informed the Speaker and other Members of the House of Commons, with reference to a motion that had been made by a member for inducing the King to take back Queen Catherine, (according to Hall,) that "he marvelled not a little why one of the Parliament House spoke openly of the absence of the Queen from him, which matter was not to be determined there, for it touched his soul; and that he wished the matrimony to be good, for then had never been vexed his conscience: but the *doctors of the Universities* have determined the marriage to be void, and detestable before God. Which grudge of conscience caused me to abstain from her company; for I am forty-one years old, at which age the lust of man is not so quick as in lusty youth."

The King, according to Hall, sent to the Parliament "the Lord Chancellor, and divers lords of the spirituality and temporality, to the number of twelve, and there the Lord Chancellor said, 'You of this worshipful House, I am sure, be not so ignorant but

you know well that the King our Sovereign Lord hath married his brother's wife, for she was both wedded and bedded with his brother Prince Arthur; and, therefore, you may surely say that he hath married his brother's wife; if this marriage be good or no many clerks do doubt. Therefore, the King, like a virtuous Prince, willing to be satisfied in his conscience, and, also, for the surety of his realm, hath, with great deliberation, consulted with great clerks, and hath sent my lord of London here present to the chief Universities of all Christendom to know their opinion and judgment in that behalf. And although that the Universities of Cambridge and Oxford had been sufficient to discuss the cause, yet, because they be in this realm, and to avoid all suspicion of partiality, he hath sent into the realm of France, Italy, and the Pope's dominions, and Venetians, to know their judgment in that behalf; which have concluded, written, and sealed their determinations according as you shall hear read.' Then Sir Brian Tuke took out of a box twelve writings sealed, and read them word by word. After these determinations were read, there were shewed above an *hundred* books drawn by doctors of strange regions, which all agreed that the King's first marriage was unlawful, which were not read, for the day was spent. Then the Chancellor said, Now you of this Common House may report in your Countries what you have seen and heard, and then all men shall openly perceive that the King hath not attempted this method for will or pleasure, but only for discharge of his conscience and surety of the succession of his realm."

If it shall appear that the King did *not* wish his matrimony with Catherine to be good but for the determinations of the Doctors of the Universities; that he did not consult the Universities from a desire to be satisfied in his conscience; that he used violent and corrupt means to procure their opinions on one side, viz. that for annulling his marriage with Catherine; that he misrepresented to his Parliament the result of those opinions,

he must incur the most indignant censure of every moral man for his mendacity and hypocrisy.

At *Cambridge* it was craftily proposed to the Senate that the power of returning an answer to the King's questions should be delegated to a Committee or Syndicate; but a *Grace* to this effect was, with justice, rejected; it was contrary to all usage, and it indicated an intention to procure an opinion from packed opinionists. A letter from the King, however, seems to have terrified the Senate into a qualified submission; ultimately it was consented to make answer to one of the questions, viz. that a marriage within the specified degrees was contrary to the divine law; yet no answer could be obtained to the other question, viz. as to the Pope's power of making such a marriage valid by his dispensation. The King expressed his displeasure to the Vice-Chancellor at the question as to the Pope's authority not being answered, and said that he would have it determined after Easter; but he judged it more consistent with king-craft to misrepresent the answer of Cambridge, as though it had been decisive of two points, instead of one.

To *Oxford* Henry wrote that the Convocation was commanded to shew its learning in the cause, "and We, for your so doing, shall be to you and to our University so good and gracious a lord for the same, as you shall perceive it well done in your good fortune to come. And, in case you do not uprightly, according to divine learning, handle yourselves therein, ye may be assured that we, not without great cause, shall so quickly and so sharply look to your unnatural misdemeanor herein, that it shall not be to your quietness and ease hereafter." A packed Committee was devised as had been done at Cambridge. The younger Masters of Arts who had not bartered their independence insisted that the King's questions should be answered in Convocation, in fact, by the University, to which body they had been proposed. The King, thereupon, wrote to the Heads, Doctors, and Proctors of the University, and not to the whole

body, a letter which contains the following passages: "Of late being informed, to our no little marvel and discontentation, that a great part of the youth of our University neither regarding their duty to us their Sovereign Lord, nor yet conforming themselves to the opinions and orders of the virtuous, wise, sage, and profoundly learned men of the University, do stick upon the opinion to have a great number of regents and non-regents to be associate for the determination of our question....If the youth of the University will play masteries, as they begin to do, we doubt not but they shall well perceive that *non est bonum irritare crabrones.*" (It is not good to stir a hornets' nest.) We hear no more than that Oxford duly answered as she was compelled to answer.

With respect to the opinions of the foreign Universities, the result of the measure of demanding them appears to have been, that opinions were given by about half only of the Universities of Europe directly or indirectly unfavourable to the Papal claims. But how were the opinions, especially those cited in the statute, obtained? The French King was busy in promoting Henry's job; and his letter to the University of Paris in Henry's favour is more imperative and tyrannical even than the missives to Cambridge and Oxford. We have extant proofs of corrupting the Universities of Italy: many letters are preserved of one Dr Croke, an agent for bribery, who relates his labours of venality at Venice, Bologna, Padua, and other parts of Italy. A confidential letter of his addressed immediately to the King is given in the third series of Ellis's *Collections*. He relates to the King the number of crowns he had paid, the names of the agents he had employed, the subscriptions of the Doctors he had procured. He writes, for instance, of the University of Padua, "Ambrose had of me for getting the determination of Padua, for his part only, twenty crowns; Thomas hath had forty-seven crowns; Franciscus, for him and Dionysius, seventy-seven crowns, as I can right well prove."

As far as the judgment of Parliament may be supposed to corroborate the authorities of the Archbishop, the Conventions and the Universities, it is to be observed that it was reversed, a few years afterwards, by many of the same members, especially of the House of Lords, in a Parliament worthy of as little confidence, but not of less, as that of Henry. By a statute of Queen Mary it was declared that the marriage between Henry VIII. and Queen Catherine had its beginning of God and stood with God's law; the statute of the 22nd of Henry VIII. was repealed, and Cranmer's sentence annulled, as being "most ungodly, and against all laws, equity, and conscience;" and it was very truly stated that Henry had "caused the seals, as well of certain Universities in Italy and France to be gotten (as it were for a testimony) by the corruption of money with a few light persons, scholars of the same Universities, as also the seals of the Universities of this realm to be obtained by great travel, sinister working, secret threatenings, and entreaties of some men of authority specially sent at that time thither for the same purposes."

(3) *Prohibited Degrees.*

The dangers to be apprehended from a disputed succession were, according to Henry's own showing, caused by his own incest with Queen Catherine; and were rendered more imminent by the divorce which he had brought about, than if he had continued to act consistently with his conduct during the first twenty years of his reign. It was politic, therefore, to hold out a religious necessity, which, notwithstanding it had long been unperceived by a theological King, might be represented as imperative. Moreover, a precept from Leviticus, though it might brand the King as incestuous, would more foully stigmatize Catherine and the Princess Mary.

It is recited, in the Act, that "Since many inconveniences have fallen, as well within this realm, as in others, by reason of marrying within the degrees of marriage prohibited by God's

laws, that is to say." Fourteen kinds of marriage are there enumerated, among which the marriage of a brother with a brother's widow stands the *tenth*; "which marriages, albeit they be plainly prohibited and detested by the laws of God, yet, nevertheless, at sometimes they have proceeded under colours of dispensations by man's power, which is but usurped, and of right not to be granted, admitted, nor allowed; for no man of what estate, degree, or condition soever he be, hath power to dispense with God's laws, as *all the clergy* of this realm, and the most part of all the famous *Universities* of Christendom, and *we*, also, do affirm and think." And then follow clauses, by which the wives were to be divorced, of persons married, or who should thereafter be married within the prohibited degrees, and their children were to be illegitimated, by the Ordinary's sentence.

This parade of Prohibited Degrees, one item only of which applied to the King's case, has the appearance of an episode, and of a law-lecture. It is remarkable, that, three years afterwards, the nation was given to understand, that in this Act of Parliament, God's prohibitions of marriage had only been partially disclosed; for that God detested a marriage with a woman of consanguinity or affinity to another woman whom it chanced any man to have known casually. It may appear that in this, and two later Acts touching the laws of marriage, Henry had express reference to his own connubial tergiversations; the notice of an hiatus proclaimed to have existed in the catalogue of prohibited degrees published in the Act under review, may warrant a suspicion, that the object of unfolding that catalogue was rather to give a colour to the King's divorce, than to remove stumblingblocks from his People.

The expression, "God's laws," which is used in this Act, was familiar to Henry and his Parliaments; thus, in the notorious Act of the Six Articles, the marriage of a Priest is declared to be contrary to the Law of God. On this subject, Sir Matthew Hale, who had no weakness of faith concerning the fact of personal

communications between the Deity and Moses, observes, “ It is most certain, the specifical natural law that is given to birds is most wisely accommodated to them ; but to say that therefore it was fit to be used by beasts or fishes, were to distort and wrong the divine wisdom. And though the specifical nature of Jews and all nations be the same, yet it is certain there ever was and ever will be, great variety in the states, dispositions, and concerns of different people ; so that a law which would be a most wise, apt, and suitable constitution to one people, would be utterly improper and inconvenient for another.”

Great was the responsibility of the Parliament in compelling the dissolution of marriages which had been, at most *voidable*, not void, made between innocent parties who had followed the example of a King renowned for his skill in divinity, and begirded by learned Prelates ; an example held forth to the nation for upwards of twenty years—man and wife, in belief and affection, were to be parliamentarily divorced, upon no pretext of national danger arising from a disputed succession to their estates : they might have had numerous *male* offspring, or wanted none ; their children were to be degraded, and despoiled, perchance, of inheritances in the expectation of which they had been brought up ; both parties might have fervently deprecated separation or any change ; yet they were compelled to submit, however reluctantly, to what Henry bribed, and intimidated, and prevaricated, to secure and enjoy.

(4) *Entail of the Crown.*

It would be useless to dwell on the particulars of an entail of the Crown which, in three years, was superseded, further than to notice that the Parliament expressly provided for the succession of a *female* heir, as thus, “ and for default of such sons of your body begotten, that then the imperial Crown shall be to the issue female between your Majesty and your most

dear and entirely beloved wife Queen Anne begotten, that is to say, first, to the eldest issue female, which is the Lady Elizabeth, now Princess . . . and so from issue female to issue female, and to the heirs of their bodies, one after another, by course of inheritance, according to their ages, *as the Crown of England hath been accustomed, and ought to go*, in cases when there be heirs female to the same."

It may be a question, whether, notwithstanding the assumption that Henry's marriage with Catherine might have been invalid, justice required that the Princess Mary ought to have been admitted to some place in the succession to the throne. It may be thought that such a provision would have facilitated acquiescence in the Act at home, and diminished the probability of foreign wars. But the vilification of the King's discarded wife and child might have been less complete; and an obstacle would have been interposed to the crowning of issue by the King without marriage *de jure* or *de facto*. The Duke of Richmond, in every sense a bastard, was treated by Henry as his presumptive heir, in preference to his daughters by marriages, at least, *de facto*: three years after this Act the King acquired a parliamentary power of devising the throne like an owner of a house, or oxen.

(5) *Treasons and Misprisions of Treason.*

The *Treasons* created by the Royal Succession Act constitute, in regard to offences of this stamp, the first of Henry's Stages of Cruelty. The Statute of Edward III. had been styled a *blessed* Act, on account of the precision which it introduced both into the definition, and into the proof of treason. This Statute of Henry VIII. multiplied the genera of treason, and relaxed the strictness of proof; moreover by the introduction of new definitions, a door was opened to fanciful constructions; whilst sufficient is known of the Judges of Henry VIII., especially Audley and Fitzjames, to have anticipated that they would not

shrink from any flight of interpretation, by which to entangle the victims of their master.

A Misprision of Treason, according to legal authorities means a concealment of it; in this Statute the Parliament asserted a tyranny over legal nomenclature, by creating two new species of this offence, neither of them involving any concealment.

The following *treasons* were enacted in this Statute, viz. "By writing, or imprinting, or by any exterior act or deed, doing anything to the *peril of the King's royal person*; or to the prejudice, slander, disturbance, or derogation of the matrimony with Queen Anne; or to the peril, slander, or disherison of any of the *Issues and Heirs* of the King, whereby they might be destroyed, disturbed, or interrupted in body, or title of inheritance to the crown."

These new treasons are remarkable for the circumstance, that although they were invented for the corroboration of Anne Boleyn's marriage, and the safety of her issue by the King, they were employed for her own destruction.

It is alleged in the Queen's indictment, after a statement of her imputed adulteries, that "Furthermore, that the King, having within a short time before, become acquainted with the before-mentioned crimes, vices, and treasons, had been so *grieved*, that certain harms and *dangers* had happened to his royal body." This count of the indictment, it is conceived, can point to no treason, except that of "doing anything to the peril of the King's royal person," which was made treason, for the first time, by this Statute.

Further, the conclusion of the whole indictment is in these terms, viz. "And thus the Queen and the before-mentioned traitors had committed the before-mentioned treasons, in contempt of the King, to the *danger* of the King's *person* and *body*, and to the scandal, danger, detriment and derogation of the *issue and heirs* of the said King and Queen." Here another charge is introduced, which sounded treasonably only under

this Statute, viz. that of "doing anything to the peril, slander, or disherison of the issues of the King." A material qualification, is, however, omitted, viz. "whereby they might be destroyed, disturbed, or interrupted in body, or title of inheritance to the Crown;" half of a sentence being judged less palpably inapplicable to the Queen's case than the whole.

Moreover, the conclusion purports to express the scope of *all* the charges in the indictment, as signifying that *thus*, i.e. by all the various facts imputed, specific treasons had been committed. The adulteries are treated as *overt acts* of endangering the King's body and his issue, in like manner, but not with like relevancy, as the cutting off King Charles's head was laid as an *overt act of imagining* his death.

Nevertheless, after a careful inspection of the original records, there can be found no trace of any averment that the imputed offences had been committed *contrary to the force of any Statute*, as was customary in the reign of Henry VIII., and before and since, when an indictment is founded on a statutable offence. The Crown officers were, probably, ashamed of their own constructions, and were averse to inviting juxtaposition of the statute and indictment.

These constructions of the Succession Act must have appeared preposterous to every man of sense; and, therefore, another statute was called in aid, which was itself only half avowed. It happens that the Statute of Edward III. of treasons being declaratory, an indictment founded upon it would be valid, either with, or without, the words *contra formam statuti*. Accordingly, in the body of the Queen's indictment, a colour was given to its being founded on the Statute of Edward, which is blotted out in its conclusion. This stratagem was practised, first, by inserting the following count, viz. "Furthermore, that the Queen and other the said traitors, jointly, and severally, 31 October, 27 Henry VIII., and at various times before and after, *compassed* and *imagined* the King's death, and that the Queen had fre-

quently promised to marry *some one* of the traitors, whenever the King should depart this life, affirming she would never love the King in her heart." These loose expressions are represented to indicate *proveablement* a design on foot to cause the death of the King; otherwise they were not treasonable under the Statute of Edward, which, moreover, as Lord Coke says, left *words* for heretics, and did not make them treason.

Secondly, five acts of adultery with the Queen are set forth in the indictment; in the statement of each of which a term from the Statute of Edward is introduced, *viz. violabat*; but a construction which should apply that term to the Queen's case was so forced and fantastical, that the framers of the indictment added to the word of the Statute, words of their own, *viz.* "vitiabat, et carnaliter cognoscebat," and superadded, that the Queen "proditorie provocabat, et incitabat."

The Queen must be represented as active, not passive, not as led astray by love, but impelled by lust, with a view of obviating the objection, under the Statute of Edward, that she could not *violate herself*. For this purpose a very improbable story is told, that, in five instances, the Queen was guilty *constructively* of *self-violation*, inasmuch as she was the initiatress and temptress; each seduced accomplice only surrendering his virtue after a few days of decent delay. This device was judged so happy, that the facts of adultery were laid in *two* indictments, as occurring *both* in Middlesex and in Kent, precisely in the same very peculiar manner, with the same persons, neither more nor less, in the same order, only on different days both of solicitation and compliance. This double arrangement, indeed, required intervals; so three years, without discovery till the end, were taken, and yet the pleader was driven to placing the first act of adulterous intercourse within a month and a day of the birth of the Princess Elizabeth. It is probable that it was not considered likely, in the nature of juries, that more than two indictments would be needed; else, as in the Duke of Bucking-

ham's case, five would, probably, have been prepared ; or, if requisite, every Grand Jury in England and Wales might have been asked to find, upon makeshift evidence presented to it, a Bill the *fac-simile* of those found in Kent and Middlesex, only with *different dates*.

Coke and Hale both treated Anne Boleyn's conviction as having proceeded on the clause in the statute of Edward, " Si homme *violast la compaigne le Roy,*" and do not advert to the charges of making the King *grieve*, or *slanderizing his issue*. And yet Anne Boleyn was put to death after a judgment had been pronounced, that she never had been legally married to the King. In like manner the statute whereby she was attainted, contains a declaration that her marriage with the King was of " no value ne effect;" the Parliament thus stultifying itself by enacting that Anne never was the King's "*compaigne*," and yet attainting her as for a crime which, unless she were his *compaigne*, she could not, by the statute of Edward, have perpetrated¹.

¹ Several arguments have been recently urged on the subject of Anne Boleyn's trial, which appear to be open to considerable question. With regard to her indictment, that document does not seem to warrant a solution of the inconsistency stated in the text which is put forward, viz. that Anne Boleyn was condemned, not only for treason, but also for *incest* and conspiracy; besides that solution being, on other grounds, obviously inadmissible. By the same writer it is advanced, that "the discovery of the indictment disposes at once of Burnet's *legend*, that the queen was condemned on hearsay evidence, or that her guilt was conjectured from an exaggerated report of foolish conversations." The indictment contains nothing to preclude the reception of hearsay at the hundredth hand, and conversations of the queen are expressly charged in it. The same writer observes of a complaint by the Lord of Milherville, who was in London at the time of the queen's trial, that "it implies only a want of knowledge of the forms which were observed upon trials for high treason, in which the witnesses were not brought into court, and confronted with the prisoner, but their depositions were taken on oath before the *Grand Juries* and the Privy Council, and, on the trial, were read out to the accused to answer as he could." There may seem to be a lack of authority as to *vivid vocis* examinations before Grand Juries; and it will probably be thought that the foreign nobleman was not animadverting on a departure from rules of practice on trials for high treason, but on the outrage to justice resulting from such rules. The writer does not appear to have consulted the original Latin record of the queen's indictment, and, in his transcript from the translation in the Report of the Commissioners of Public Records, omits its very important conclusion.

The first *Misprision of Treason* created by the Succession Act is made to consist in *words*, without writing, or exterior act or deed, whereby anything is published, divulged, or uttered to the peril of the King, slander or prejudice of the marriage with Anne Boleyn, or the slander or disinheritance of the royal issue. The clause on the subject is remarkable for the novel import given to the term *misprision of treason*, and for the severe punishment of imprisonment for life and confiscation on account of *words*, which was a prelude to making them, as well as silence, perfect treasons. It also affords an illustration how, by judicial interpretation, a minor offence may have its complexion darkened, as thus :

Two monks of the names of Hale and Feron were convicted in the year 1535 of treason, on account of a *conversation* which they were said to have had together, when walking "to and fro." Hale is stated, in the indictment, to have *said* to Feron, "If thou wilt deeply look upon the King's life, thou shalt find him more foul and more stinking than a sow, wallowing and defiling herself in any filthy place; for how great soever he is, he is fully given to his foul pleasure of the flesh and other voluptuousness. And, look how many matrons be in the Court, or given to marriage, these almost all, he hath violated, so often neglecting his duty to his wife, and offending the holy sacrament of matrimony. And, now, he has taken to his wife of fornication this matron Anne, not only with the highest shame and undoing herself, but also all this realm."

Nevertheless, this "slander of the King's marriage" was only in *words*, and these were not made treason till a statute in the 26th year of the King. In order to remove this difficulty, it was alleged, in the indictment, that Hale *spoke* the words with a view of exciting Feron to *write* against the King, who subsequently wrote down in Latin the words which Hale had spoken in English. Here then, it was construed, there was a slander of the King's marriage in *writing*, and that *words* might inter-

pretatively become *writings*, albeit in a different language, and according to another man's version.

The second misprision of treason in this statute will be conveniently considered under the following head, with which it is intimately connected. The two misprisions are as unlike each other in character, as they both differ from misprision of treason at Common Law.

(6) *The Oath.*

Few, it is conceived, will advocate the compulsory exaction of oaths, not as a qualification for office, or as preliminary to the discharge of any public duty, but merely as a test of what Government might suspect a recusant would do upon the happening of contingent emergencies, in order that he may be punished, by anticipation. Such, however, is the principle of a clause in the present Act, to be followed in the subsequent years of Henry's reign, by other clauses to a similar effect, more sanguinary as that reign advanced. Among the objections to such State Oaths is the obvious one, that the profligate and unprincipled, whose conduct is most to be suspected, make no scruple in taking them. Religionists, at this period, drew a distinction between what they swore in the *outward* and in the *inward* man. Henry, not long before the passing of this Act, when Queen Catherine had been pressed to take a vow of chastity, commanded his ambassadors at Rome to instruct themselves on the following point, viz. "Whether, if the King should promise to enter into religion, on vows of chastity for his part, only to conduce the Queen thereunto, the Pope's Holiness might dispense with the King's Highness for the same promise, *oath*, or *vow*, discharging his Grace clearly of the same?"

The Oath imposed by the Succession Act is thus provided for, viz. "And, for the more sure establishment of the succession of your most royal Majesty, be it further enacted that as well all the nobles of your realm, as all other your subjects now

being, or which hereafter shall be, at their full ages, by the commandment of your Majesty, or your heirs, shall make a corporal oath that they shall *truly, firmly, and constantly, without fraud or guile, observe, fulfil, maintain, defend, and keep, to their cunning, wit, and uttermost of their powers, the whole effects, and contents of this present Act.*" Persons refusing to take the oath were to be adjudged guilty of *misprision of treason*, this being the second creation, in the Act, of that offence in a new sense.

Sir Thomas More and Bishop Fisher were summoned to take the oath required by the statute; but a different oath was tendered to them, which they declined to take; whereupon they were committed, by the King's Council, to the Tower. It is presumed that the pretext of their committals was that they might be tried, in due course, for the offence of misprision of treason; they were, however, imprisoned for a long space of time, without trial; the subject, in this reign, having, practically, no *habeas corpus*.

The oath actually tendered to More and Fisher was one which is to be found in the Journals of the House of Lords at the close of the proceedings of the session; it had no legislative authority. It is as follows:

"Ye shall swear to bear your faith, truth and obedience *only* to the King's Majesty, and to the heirs of his body, according to the limitation and rehearsal within this statute of succession *above specified*¹; and not to any other within this realm, *nor foreign authority, prince or potentate*; and in case any oath be made or hath been made by you to any other person or persons, that then you *do repute the same as vain and annihilate*: and that, to your cunning, wit, and utmost of your power, without guile, fraud, or other undue means, ye shall observe keep, maintain and defend this Act above specified, and all the whole contents and effects thereof, *and all other Acts and statutes made*

¹ The words "above specified" have not always been inserted in statements of this oath; they may be thought to indicate its *after-make*.

since the beginning of this present Parliament, in confirmation or for due execution of the same, or of any thing therein contained. And thus ye shall do against all manner of persons, of what estate, dignity, degree or condition soever they be; and in no wise do or attempt, nor to your power suffer to be done or attempted directly or indirectly, any thing or things, privily or apertly, to the let, hindrance, damage or derogation thereof, by any manner of means, or for any pretence or cause, so help you God, and all Saints!"

Sir Thomas More's son-in-law makes the following relation of this circumstance: "Whereas the oath confirming the Supremacy and Matrimony was, by the first statute, in few words comprised, the Lord Chancellor and Mr Secretary did, of their own heads, add more words unto it, to make it appear to the King's ears more pleasant and plausible. And *that* oath, *so amplified*, caused they to be ministered to Sir Thomas More, and to all other throughout the realm. Which Sir Thomas More perceiving, said unto my wife, 'I may tell thee, Meg, they that have committed me hither for the refusing of this oath, *not agreeable with the statute*, are not, by their own law, able to justify mine imprisonment: and surely, daughter, it is great pity that any Christian Prince should, by a flexible Council ready to follow his affections, and by a weak Clergy lacking grace constantly to stand to their learning, with flattery be so shamefully abused.' But at length the Lord Chancellor and Mr Secretary, espying their oversight in that behalf, were fain afterwards to find the means that another statute should be made for the confirmation of the oath *so amplified with their additions.*"

It is obvious, upon an inspection of the two oaths, that they are not only very different in form, which would render the committals illegal, even if the commissioners had power to commit at all, but were, also, essentially different in substance. The unparliamentary oath, the one tendered to More and Fisher, approximated to an oath of Supremacy, before the King's

Supremacy had been declared by law: it required the deponent to swear that he repudiated former oaths to be vain and annihilate; a strain on the conscience, and an assumption of the power of absolution. Deponents, at any future period, might be called upon to swear to defend any number of statutes, made or to be made, under peril of those statutes being adjudged in confirmation or in execution of the Succession Act.

Roper's statement that another statute was passed in confirmation of the void and illegal oath, for declining to take which More and Fisher had suffered, is explained by an Act passed in the 26th of the reign, in the following terms.

It is recited, that, in the last Session of the Parliament, an oath was imposed, by statute, on all subjects that "they should truly, firmly, and constantly, without fraud or guile, observe, fulfil, defend, maintain, and keep, to their cunning, wit, and uttermost of their powers, the whole effects and contents of the said Act." It is, further, recited, that, "at the day of the last prorogation, as well the nobles spiritual and temporal as other the Commons then assembled in the high Court of Parliament, most lovingly accepted and took such oath *as then was devised* in writing, for maintenance and defence of the said Act; and meant and intended, at that time, that every other the King's subjects should be bound to accept and take the same, upon the pains contained in the said Act, the *tenor* of which oath hereafter ensueth."

"Ye shall swear to bear faith, truth, and obedience *alone* to the King's Majesty, and to the heirs of his body of his most dear and entirely beloved wife Queen Anne, and not to any other within this realm, *nor foreign authority or Potentate*, and, in case any other oath hath been made by you to any person or persons that then ye to reporte the same as vain and annihilate. And to your cunning, wit, and uttermost of your power, without guile, or fraud, or other undue mean, you shall observe, keep, maintain, and defend the said Act of Succession and all the

whole contents and effects thereof, and of all other Acts and Statutes made in confirmation or in execution of the same, or of any thing therein contained. And this ye shall do against all manner of persons of what estate, dignity, degree, or condition soever they be. And in no wise do or attempt, nor to your power suffer to be done or attempted, directly or indirectly, any thing or things, privily or apertly to the let, hindrance, damage, or derogation thereof, or of any part of the same by any manner of means, or for any manner of pretence. So help you God, all Saints, *and the Holy Evangelists!*"

It was further thereupon enacted, "Forasmuch as it is convenient for the sure maintenance of the said Act that the said oath should not only be authorized by authority of Parliament, but also be interpreted and expounded by the whole assent of the present Parliament, that it was meant and intended by the King's Majesty, the Lords and Commons of the Parliament at the said day of the said last prorogation, that every subject should be bound to take the same oath according to the tenor and effect thereof upon the pains contained in the said Act. Therefore be it enacted, by authority of this present Parliament, that the said oath above rehearsed shall be interpreted, expounded, reported, accepted, and adjudged the very oath that the King's Highness, the Lords Spiritual and temporal, and the Commons of this present Parliament meant and intended that every subject of this realm should be bound to take and accept, for maintenance and defence of the same Act, upon the pains contained therein, and that every of the King's subjects, upon the said pains, shall be obliged to take the said oath."

According to this Statute of the 26th year, there was, first, an oath prescribed in terms by a previous statute; this was followed by an oath *devised*, but not by Parliament; then the *tenor* of that oath is set forth, and it is enacted that the *tenor* oath shall be deemed the *very* oath intended by the previous statute.

It is a matter of minor importance to draw any distinction

between the *devised* oath, and the *tenor* oath ; but it may be observed that it was usual at that period in conveyances to and from the crown to identify them not by their tenor, but by their correspondence "in every word, and word for word." It will be noticed, that the *devised* oath is made by God and all Saints ; the *tenor* oath, by God, all Saints, and the *Holy Evangelists*. If, in law, as in fact, the *devised* and *tenor* oaths were not identical, however concurrent in substance, the devised oath was never legalized, or Fisher and More made retrospectively recusants of a lawful oath.

But, on any supposition respecting the legal identity of the *devised* and *tenor* oaths, the effrontery and injustice of the statute of the 26th are conspicuous. A Parliament which expressed one oath is declared to have meant another, differing from it in substance, and that upon points on which the consciences of men were, at that period, peculiarly sensitive. Two illustrious individuals were made criminals for refusing what, at the period of their refusal, was no crime ; the countenancing of whose illegal prosecution was, according to Roper, and the probability of the case, the moving cause to this abuse of legislation¹.

¹ A recent historian, whose talents have drawn much attention to the reign of Henry, treats copiously of More and Fisher : he does not, however, take any notice of the statute of the 26th year, or its explanatory oath. He gives what he calls "the terms of the oath to the statute of succession," without a hint that what he transcribes was essentially different from that oath. He professes to copy from the journal of the House of Lords what he does not mention was *no law*. Further, he supposes that the commissioners pronounced against More and Fisher "the penalties of the statute;" and he gives Henry credit for his leniency in not enforcing that part of the sentence which would have enabled him to take away Fisher's bishopric, or More's house at Chelsea ; whereas the commissioners had no power to adjudicate. They committed More and Fisher to the Tower, where, after they had lain seven months under illegal imprisonment, the oath was attempted to be patched up by the second Act of the next Session of Parliament, and, later in the Session, as will be seen in the next Chapter, they were, for the first time, condemned without trial, when no mercy was shewn them ; the bishopric and the house at Chelsea were then taken away, being the earliest moment at which confiscation was practicable. The two statutes of attainder whereby the penalties of the Succession Act were inflicted on More and Fisher, appear to have escaped the attention of the historian.

(7) *Punishments.*

Under the ambiguous expression, in the Succession Act, of "estate of *inheritance*," estates tail were first covertly made forfeitable for treason. So great a change in the law would more seemingly have been introduced in a less furtive manner. With like clandestinity, a saving in the statute, as is suggested by Sir Matthew Hale, of "other than such persons as shall have been so convict, their heirs and *successors*," may have been intended to *fasten* upon lands in the right of a corporation sole, as a Bishop or Abbot. Those who regard capital punishments as occasioning consequences of crime to survivors which are to be viewed with regret even so far as they are inevitable, will not approve of such extensions of the law of forfeiture. Confiscation, moreover, in the reign of Henry VIII. was far more to be deprecated than in the present day; for the Sovereign had then a personal interest in the property of convicted traitors; and it is known that he was early and greedy in hunting out their effects. The rules of evidence and of practice upon criminal trials of that day are explicable only on the presumption that they were framed with a view to snatch forfeitures. The Judges upon trials for treason and felony were deciding on the King's right to land and gold.

Sanctuary was taken away by this Statute from offenders in any of the treasons, or misprisions of treason created by it; this denial of Sanctuary stands in unsightly contrast with the privilege of Sanctuary left untouched in the cases of other treasons, murders, and atrocious crimes more prejudicial to society than the King's newfangled treasons and misprisions.

CHAPTER III.

PARLIAMENT.

THE Reformation Parliament met after an illegal intermission of a like assembly for seven years, and, with the exception of a single session, for fourteen years. The nation had thus become habituated to unlimited monarchy; and it will, therefore, not be surprising, if, at the instigation of the King, the Parliament did not always preserve its constitutional limits, but sometimes encroached on the ancient institutions of the country, particularly trial by Jury; sometimes participated with the Sovereign in his prerogatives, apparently in order to conceal his intervention; and sometimes delegated its powers to the King, in spite of the old saw that *delegatus non potest delegare*.

It is proposed to treat of these extravagancies in the following order: (1) The attainer of the Nun of Kent, (2) That of Sir Thomas More, (3) That of Bishop Fisher, (4) Miscellaneous Attainders, (5) Pardons, (6) Delegations of Legislative Power.

Parliamentary Attainders were very rare before the reign of Edward IV.; but, from the beginning of his reign to that of James, they entirely suspended Impeachments. In the wars of the *Roses*, and, under the Tudors, attainders were commonly adopted by the Government, as the most speedy and commodious engine known for destroying, under the forms of the constitution, the enemies on whom it was desired to wreak the King's vengeance.

The doctrine that a Parliamentary Attainder holds good in law, notwithstanding a violation of the first principles of justice, is a corollary from the truth, that so long as the Constitution of

the State is maintained, a supreme and legally irresponsible authority is vested in the Parliament. On the moral responsibility however, of the King, Lords, and Commons, with regard to Attainders, some important remarks will be found in the Fourth Institute of Lord Coke : he, there, observes that, "Albeit I find an Attainer of Parliament for high treason of a subject committed to the Tower, and forth-coming to be heard, and, yet, never called to answer in either of the Houses of Parliament, although I question not the power of Parliament, for, without question, the Attainer standeth of force, in law: yet, this I say of the proceeding, *Auferat oblivio, si potest, si non, utcunque silentium tegat.* For the more high and absolute the jurisdiction of the Court is, the more just and honourable it ought to be in the proceeding, and to give example of justice to inferior Courts."

(1) *Nun of Kent.*

The Attainer of the Nun of Kent is the principal legislative conviction for treason passed by the Reformation Parliament. The Act contains a preamble in which are recited the King's divorce from Queen Catherine, and his marriage with Queen Anne, his "conscience against God," and the opinions of the Universities. After which are accumulated multitudinous details affecting the Nun and her associates, of which the following is a Compendium.

Elizabeth Barton, long before she became a Nun, dwelt with one Cobbe in the parish of Adlington in Kent, and was there visited with sickness. In the violence of her infirmity she seemed to be in trances, and uttered many foolish words. One Richard Maister, parson of Adlington, gave an exaggerated account of her speeches to Warham, then Archbishop of Canterbury. The Archbishop commanded him to give attendance on Elizabeth Barton, and to inform him of any more of her sayings. Thereupon, Maister, in order to maintain the credit of the narrative he had made to the Archbishop, told Elizabeth that the

words she had uttered proceeded from the inspiration of the Holy Ghost, and that she was to be blamed, if she concealed the works of God in her. Soon afterwards, upon the persuasion of Maister, Elizabeth took courage to counterfeit trances and speeches uttered in them. Afterwards, when she was perfect in this art, and the noise of her had spread, Maister, in confederacy with a monk of the name of Bocking, induced Elizabeth to feign a revelation from the Virgin Mary in person, that she should not get well, except through prayers to an image of the Virgin in a chapel which she was directed to visit: this deception was for the purpose of attracting pilgrimages to a certain Lady-chapel, for the lucre of Maister and Bocking. Subsequently, by the counsel and confederacy of Maister and Bocking, Elizabeth falsely shewed to the people marvellous and sudden alterations of the sensible parts of her body, craftily uttering, in feigned trances, words in rebuke of sin, and for reproving new opinions that had begun to spring in this realm, and which she called heresies. Bocking, being fixed in his opinion against the King's marriage with Anne Boleyn, and intending in his mind, afterwards, for his part, to use Elizabeth as a "diabolic instrument" to stir the people to murmur and grudge against the King, and his lawful proceedings in the matter of the divorce, (as after he did in very deed,) for the accomplishing of his intents, conspired with Maister that Elizabeth should go to the Lady-chapel, and, there, before a crowd which they should collect, act her trances; "to whose counsels and advertisements Elizabeth agreed." Bocking and Maister, next, procured Elizabeth to be brought to the chapel accordingly, where, in the presence of more than two thousand persons, she made many alterations of her face, and the outward sensible parts of her body, and uttered wondrous words as she was taught by Maister and Bocking; amongst others, that it was the pleasure of God that she should be a Nun. After some pretended trances Elizabeth appeared to be suddenly relieved from sickness, as if by the

intercession of the image of the Virgin in the chapel. Elizabeth, then, by the consent and procurement of Maister and Bocking, became a Nun. By occasion of like counsel and procurement, feigning that she had many revelations from God, and His Saints, that she saw heavenly lights, and heard heavenly melodies, Elizabeth pretended to receive these revelations once or twice weekly in the chapel, by night, the chapel-door being opened by God's power; whereas she went to the chapel for the purpose of fornication, for which there was not good opportunity in day-time. For the ratification of her revelations, Elizabeth, by confederacy with Bocking, communicated them to the Archbishop of Canterbury, who was induced to give them credit. For a perpetual memory of Elizabeth's hypocrisy, Maister, Bocking, and a monk of the name of Dering, wrote, and caused to be written sundry books, "both great and small, printed and written," concerning the Nun's revelations, in defence and praise of the same, as though they were true miracles. Among the false revelations thus put in writing, it was expressed that the devil appeared to the Nun sometimes like a man wantonly apparelled, and sometimes like a deformed bird; that the Nun had received a letter from heaven by the hands of Mary Magdalene, part whereof was "lymned with gold letters," being, in fact, written and illuminated by a monk, to the effect that, when Henry and Francis were receiving the mass together at Calais, Henry did not see the consecrated bread, for it was taken away from the Priest by an Angel, and ministered to the Nun who was there present, but invisible, and who was, afterwards, suddenly conveyed thence, by the power of God, to her nunnery; as, by the said books and writings, "*seen and examined by the King's most honourable Council,*" more plainly appeareth. In which books were written such terms and sentences of reproach and slander against the King and Queen as were too shameful to be written against the most vile and ungracious persons living, which to hear, would move abhorrence in every true subject of the realm.

Further, "Bocking counselled and stirred Elizabeth that she should ask a petition of Almighty God, to know whether God was displeased with the King's Highness for proceeding in the divorce from Queen Catherine, declaring to her many times, that he, and divers other notable and learned men of this realm, and many of the common people of the same were in firm opinions that the King's proceedings in the divorce and re-marriage were against the laws of God. Whereupon Elizabeth subtly and craftily conceiving the opinion and mind of Bocking, willing to please him, revealed and shewed to him, that she had knowledge, by revelation, that, *in case* the King did not desist from proceeding with the divorce, but married again, that then, within one *month* of such marriage, he should no longer be King of the realm; and, in the *reputation* of Almighty God should not be a King one day, nor one hour; and that he should die a villain's death: further, that it would never be merry in England till a root with three branches were plucked out; meaning thereby that Cardinal Wolsey was the root, and the three branches the King, and the Dukes of Norfolk and Suffolk. Which feigned revelations by the malicious counsel and conspiracy of the said Bocking with the said Elizabeth were written and expressed in books and volumes for a perpetual memorial thereof." The books were secretly circulated among divers of the King's subjects, especially those who bore malignity to the King's divorce, thereby to "lefft the divorce, and to bring the King into an evil opinion with his people." And "for a more particular declaration of the traitorous intention of the prisoners, they concluded, by a confederacy among themselves, each with other, to set forth in sermons and preachings the said revelations against his majesty to the people of this realm, whensoever it should please the said Elizabeth to appoint them the time when they should so do; and agreed, each with other, secretly to set forth the said revelations to their acquaintance and friends in this realm, intending to make a great multitude of the people of this realm by their secret

conspiracies in an aptness to receive and take such their sermons and preachings." And, moreover, one of the conspirators, of the name of Golde, "travelled and made relation of the premises to the Lady Catherine, to animate her to make commotion in this realm against our Sovereign Lord, submitting that the said Elizabeth should have it, by revelation of God, that the said Lady Catherine should prosper and do well, and that her issue, the Lady Mary, should prosper and reign in this kingdom, and have many friends to sustain and maintain her."

It is thus concluded: "In consideration of all which premises, and forasmuch as the said false, feigned, and dissimulated hypocrisy, cloaked sanctity, revelations and feigned miracles of the said Elizabeth is *plainly confessed, before the King's most honorable Council*, by the said offenders, and hath been set forth in this realm, not only to the *blasphemy* of Almighty God, whereby a great multitude of the people of this realm were not only induced to *idolatry*, but also brought into a murmur and grudge among themselves, to the great peril of the destruction of our Lord the King, and his succession, and to the jeopardy of a great commotion, rebellion, and insurrection within the realm, and to the utter desolation thereof, if by the goodness of Almighty God, and by the great travail of the King's Highness and Nobles and Counsellors, by great searches and examinations, it had not been revealed;—Be it, therefore, enacted, that the said Elizabeth Barton, Bocking, Dering, Rech, Reily and Golde, shall be convict, and attainted of High Treason, and shall suffer such execution and pains of death as in cases of high treason hath been accustomed." In the case of Elizabeth Barton the legal mode of execution would have been burning.

Upon a view of the facts as stated in the Act of Attainder, it will probably be thought that the condemnation of the Nun for high treason was a step towards the Act, passed later in the reign, for trying and executing *maniac* traitors, on the alleged ground that it was *sometimes* difficult to tell whether an accused

person was sane or not. It is not satisfactorily shewn that the Nun was engaged in the prosecution of a design to accomplish any of the specific purposes pronounced to be traitorous by the statute of Edward III., as of war, or the King's death, and the era of treasonable words and belief had not commenced. Her denunciations would appear to have had reference to a special Providence, such as Henry had put in the heads of his subjects, when he represented that the loss of his children by Queen Catherine plainly shewed that heaven was opposed to his marriage with her. The Nun's revelations had chiefly regard to the King's future and contingent conduct, warning him of what he might either incur or avoid, and they had been refuted by events that had occurred. The alleged confederates appear to have used the Nun as their tool, first, to impose on the religious credulity of the people for their own lucre; and afterwards, seditiously, to diffuse a general aversion to the divorce, and to encourage Catherine and her daughter in not yielding it their acquiescence. The Act, though its object is the infliction of capital punishment for treason, contains many facts and animadversions on blasphemy, idolatry, fornication, hypocrisy, fictitious miracles, clothed sanctity, not treated simply as overt acts, but as substantive and obnoxious delinquencies.

Lord Coke lays it down, in *two* of his works, that the offences of the Nun of Kent and her confederates were not treason. In his third Institute, in his memorable commentary on the words in the Statute of Treasons *per overt fait*, he has this note: "See 25 H. VIII. c. 12. Elizabeth Barton and others attainted by Parliament for divers words and conspiracies, which being not within this Act without an *overt act*, they could not be attainted by common law." And in his fourth Institute he writes, "And where, by order of law, a man cannot be attainted of high treason unless the offence be, in law, high treason; he ought not to be attainted by general words of high treason by authority of Parliament (as sometime hath been used); but the high treason

ought to be specifically expressed, seeing that the Court of Parliament is the highest and most honourable Court of Justice, and ought to give example to inferior Courts." Lord Coke's marginal note to which passage is: "25 Hen. VIII. c. 12. Eliz. Barton and others. And see the Act of the Attainder of Lord Cromwell."

The case has been above considered as the matter is stated upon the face of the Act of Parliament; but in the very Act reference is made for the truth of facts to examinations not before either House of Parliament, but before the King's Council. The Lords had inquired of the King whether "it squared with his mind" that the accused persons should be heard to speak for themselves before the Star Chamber. The tribunal which decided was not that which examined¹. The parties attainted, although forthcoming, were not heard in their own defence before either House of Parliament, which brings the case within the same category as the one of which Lord Coke desires that the memory could be obliterated.

It remains to be noticed, that the Nun and her accomplices were doubly punished; for, previous to their attainders, they had been exposed on a platform at Paul's Cross, by the side of the pulpit; and, when the sermon was over, they were compelled, one by one, to deliver their "Bills" expressive of penitence for having offended God and the King, to the preacher, who read them aloud to the surrounding crowd; further punishment, it is conceived, in the case of the Nun herself, if not also of her accomplices, was neither necessary nor deserved; and it may be thought that they were all put to death, even upon the showing of the indictment, by retrospective law.

¹ It has been advanced, that the parties attainted "were not able to disprove a single article of the Act," for which statement there is no colour; nor is it easy to say what they might have been able to do, when they were not allowed to do anything. The same writer lays it down, in flat contradiction to Lord Coke, that the offences of the nun and her associates were unquestionably *treasons*; and that "they received a fate most necessary and most deserved."

(2) *Sir Thomas More.*

Sir Thomas More was three times the subject of Bills of Attainder¹: from the first his name was withdrawn; by the second he was convicted; the third was passed after his death.

In the Act for attainting the Nun of Kent, Sir Thomas More was originally charged with misprision in having concealed the Nun's treasons. His son-in-law Roper relates the following circumstances concerning the withdrawal of his name from that charge. He states that More, upon finding his name inserted in the Bill, "was a suitor personally to be received in his own defence to make answer to the Bill;" but that the King "not liking that," it was resolved that More should be examined before a Committee of the Council. Roper further states, that the Committee, "instead of discussing More's guilt or innocence, tried to make a convert of him to the King's own views on the subject of the divorce, but in vain: and that, on the result of this conference being reported to Henry, he was so highly offended that he said he plainly told them he was fully determined that the aforesaid Parliament Bill should undoubtedly proceed forth against Sir Thomas More; that the Lord Chancellor and the rest of the Lords said, that they perceived the Lords of the Upper House so precisely bent to hear Sir Thomas More, in his own defence, make answer for himself, and that if he were not put out of the Bill, it would without fail be utterly an overthrow of all. But for all this, needs would the King have his own will therein, or else, he said, that, at the passing thereof, he would be personally present himself. Then Lord Audley and the rest seeing the King so vehemently set thereupon, on their knees most humbly besought his Grace to forbear the same; considering that if he should in his own presence receive an overthrow, it would not only encourage his subjects ever after to

¹ These parliamentary judgments have been usually termed Attainders; they are more strictly, when not for treason or felony, Acts of Pains and Penalties.

contemn him, but also through all Christendom redound to his dishonour for ever: adding, that they doubted not they should find a more meet occasion to serve his turn better. Whereupon, at length, through their earnest persuasion, he was content to condescend to their petition."

This relation of Roper may appear, in some measure, inconsistent with More's conduct, when Chancellor, in recommending the opinions of the Universities to the favourable consideration of the Commons, and also to an extant letter from him to Cromwell, in which he writes in diffident language of the divorce, and praises Anne Boleyn. This and another extant letter of More to the King, in Ellis's *Collections*, shew that he entreated to have his name withdrawn from the Bill in abject and adulatory terms. It may even be thought that he was not sincere in some expressions concerning his altered views in relation to the Nun of Kent, calling her "the most false dissembling hypocrite that had been known, and guilty of the most detestable hypocrisy and devilish falsehood; and that he believed she had communication with an evil spirit¹."

A second Attainder for Misprision of Treason against Sir Thomas More was passed by Parliament, A. D. 1534, in the twenty-sixth year of the reign. The offences alleged in the Act were the refusing, *since the first of May* then last past, to take an oath for the establishment of the Succession, and for that "he hath unkindly and ingratefully served our Sovereign Lord by divers and sundry ways, means, and conditions, contrary to trust and confidence." The latter charge was introduced, in order to affect inheritances. During the whole progress of this Act More was a close prisoner in the Tower, and, probably, did not hear of it.

¹ More's letters were published by Serjeant Rastall, More's nephew, in 1557, with an omission of reflections upon the Nun. See *Archæol.* Vol. XXX. A late historian omits all notice of Roper's relation concerning the circumstances under which the name of More was withdrawn, and of the two subsequent attainders.

It was apparently with a view of reaching beyond More's life-time, that by a separate clause from that adjudging confiscation for misprision of treason, two letters patent containing grants of lands from the King to Sir Thomas More are made "void, frustrate, and of none effect," on the grounds of "unkindness and ingratitude." The forfeiture for misprision was made to relate back to a period antecedent to the alleged date of his offence, viz. to the first day of *March*, the offence being alleged to have been committed *since* the first of *May* last passed; whereas More's refusal to take the oath occurred on the 13th of *April*; the forfeiture for ingratitude related back to the 1st of *November*.

A petition is extant from Lady More and his children to the King upon the occasion of the passing of the Bill of Attainder, and the consequent seizure of her husband's property at Chelsea. More's release from prison is prayed for, with the restitution of such portion of his forfeited estates as the King might think proper to grant "in the way of mercy and pity." This letter, which is published in the *Archæologia*, confirms the opinions expressed in the last chapter, that the Commissioners for taking oaths had no power to adjudge a seizure of More's effects, and that the King did not spare the house at Chelsea when he became able to take it.

A *third* Attainder was passed, in the 27th year of the reign, against Sir Thomas More, about nine months after he had been executed. It is recited, in the Act, that Sir Thomas More had "of his corrupt and malicious mind," conveyed certain estates, particularly at Chelsea, after his treasons "prepensed in his heart, and a little before" he committed them, and that he took courage thereby to commit treason, "thinking that whatsoever treason he should commit, yet, nevertheless, his lands should not be lost, nor forfeited to the King's Highness;" it was therefore enacted that the lands conveyed by him in certain deeds bearing date in the previous *March*, should be forfeited to the King from the *fourth of February*, 1535-6. Sir Thomas More is, by the

same Act, stated to be "convicted and attainted of treason by the authority of Parliament." The confiscated property was to be vested in the King, without the publicity and possible controversy incident to an *inquisition of office*.

It is acknowledged, in the Act, that the vacated conveyances were executed "a little *before*" the treason More was alleged to have committed; but, in order to give a colour to this proceeding, it is added that the treason was "*in his heart*." More's son-in-law writes that "the conveyances were perfectly finished long before the matter whereupon he was attainted was made an offence, and yet after, by statute, avoided." In the Act of Attainder the conveyances are stated to have borne date on the 25th day of March, in the twenty-fifth year of Henry's reign, A. D. 1533-4, which was about eight months previous to the date of the Act making More's offences treasonable, and longer before the days on which they were stated to have been committed in his indictment.

(3) *Bishop Fisher.*

Two Acts of Attainder for Misprision of Treason were passed against Bishop Fisher¹. In the *first*, that for attainting the Nun of Kent, he was charged for that "having knowledge of the feigned and dissimulated revelations, he did, nevertheless, make concealment thereof, and uttered not the same to our Sovereign Lord the King, nor any his honourable Council, against his duty and allegiance."

The charge against Fisher may be divided into two heads: (1) Did he know of any treason? (2) Did he conceal his knowledge thereof?

The first question has been above partly answered in treating of the Nun's case, as far as regards the Nun herself having been guilty of treason. There is no ground for supposing that Fisher knew more than appears from his own letter to the Lords, which

¹ The latter of these Acts is ignored by some eulogists of Henry.

contains a very small part, and that the least exceptionable, of the words and actions imputed to the Nun in her attainder.

As to the second question, touching guilty concealment, it is believed that no evidence has been discovered, save what may be found in the Bishop's letter, that has been argued to prove any criminal concealment, even supposing that Fisher knew of any crime; it is indeed admitted, in the Act of Attainder, that the Nun's revelations, so far from being concealed, were published in "sundry books, great and small, printed and written." The Bishop's letter will speak for itself.

Bishop Fisher, in his letter to the House of Lords, after stating various reasons why he was induced not to believe any deceit in the Nun of Kent, writes, "The words that she told me concerning the King's Highness were these: She said that she had a revelation from God, that if the King went forth with the purpose he intended, he should not be King of England seven months after, and she told me also that she then had been with the King, and shewed unto his Grace the same revelation."

He adds, "I neither gave her any counsel in this matter, nor knew of any forging or feigning thereof. And I will answer before the throne of Christ, I knew not of any malice or evil that was intended by her, or by any earthly creature, unto the King's Highness. Neither her words did so sound that by *any temporal or worldly power* such thing was intended, but only by the power of God, of whom, as she then said, she had this revelation to shew unto the King."

As to the concealment of the words of the Nun, he mentions several reasons for believing that the King had given her an interview (a fact to which there is abundant testimony), and continues, "I thought, therefore, that it was not for me to reiterate the Nun's words to the King again; and surely divers other causes dissuaded me so to do which are not here openly to be rehearsed."

A letter by Fisher to the King is to the same effect, only

that he therein enters more fully into the causes which induced him not to *reiterate*, as he believed it would be doing, the Nun's words to the King. He writes : "I conceived not by her words, I take it upon my soul, that any malice or evil was intended to your Highness by any mortal man, but only that they were the threats of God, as she did then affirm."

"I thought, doubtless, that your Grace would have suspected me, that I had come to renew her tale again unto you, rather for the confirming of my opinion than for any other cause. I beseech your Highness to take no displeasure with me for this that I will say. It sticketh yet, most Gracious Sovereign Lord, in my heart, to my no little heaviness, your grievous letters, and, after that, your *much fearful words* that your Grace had unto me for shewing unto you my mind and opinion in the same matter, notwithstanding that your Highness had so often and so straitly commanded me to search for the same before, and for this cause I was right loth to have come unto your Grace again with such a tale pertaining to that matter."

Fisher, in his letter to the House of Lords, further stated, that, owing to severe illness, he was unable to attend in his place, and therefore was constrained to write ; as to which he begs for a *personal hearing* upon his recovery, in these terms : "My suit unto all you, my honourable Lords, is, that no Act of condemnation concerning this matter be suffered to pass against me in this high Court, *before that I be heard, or else some other for me,* how that I can declare myself to be guiltless herein." He adds this sound advice and just petition in regard to the principle of Parliamentary attainders : "I most humbly beseech you all, on your charitable goodnesses, if that, peradventure, there should be thought any negligence in me for not revealing this matter unto the King's Highness, you, for the punishment thereof, which is now past, ordain no *new law*; but let me stand unto the laws which have been heretofore made, unto the which I must and will obey."

Fisher was condemned unheard, and by a new law subversive alike of the ancient landmarks of offences and the institution of Trial by Jury. Fisher deserves the admiration of posterity in withstanding Cromwell's tempting promise of forgiveness on condition of "writing to the King, recognising his offence, and entreating pardon." He refused to purchase safety by a lie, and by denouncing himself as a breaker of a law that he had never violated; his feigned penitence might have prejudiced persons involved with him in the same indictment: it would clearly have been a pernicious example of pliability of conscience in a Christian Bishop.

A second Act for the attainder of Bishop Fisher was passed in the 26th year of the reign; it was for refusing "*since the first of May last past* to take the oath for the establishment of the succession." The forfeiture was to reach, as in More's case, to the *first of March* preceding; the See of Rochester was to be vacated on the next second of January.

Nearly the same observations are applicable to Fisher's attainder for recusancy as have been made with regard to that of More. It would appear that they both were close prisoners when their attainders were passed, were both forthcoming, yet unheard by their Judges. The dates assigned for the commission of offences and retrospect of forfeitures are equally open to animadversion. The illegality of the oaths which they were charged with having refused, and the base arts by which it was attempted to legalize them, were the same in both cases. There was no substantial difference between the seizure of a bishopric and of a house at Chelsea; Henry made none, and spared neither.

(4) *Miscellaneous Attainders.*

One of the most extravagant and cruel laws to be found in the Statute-book is a retrospective *attainder* enacted in the 22nd year of the reign, of one *Roose*, for a newly-made treason, viz. poisoning; it deprived him of the privilege of clergy, to which

he was at that period entitled, and boiled him. As a signal monument of legislative folly, the same Act transformed all future poisoners into traitors to be punished with boiling. The Act purports to have emanated from the King.

In the Preamble of the Act it is recited that, "The King's Royal Majesty, *calling to his most blessed remembrance* that the making of good and wholesome laws and the due execution of the same against the offenders thereof is the only cause that good obedience and order have been preserved in this realm," and that "one Roose, a *cook*, had cast a certain venom or poison into a vessel replenished with yeast or balm and other things convenient for porridge or gruel, and which was standing in the kitchen of the Bishop of Rochester, whereby seventeen members of the family of the Bishop were mortally infected and poisoned, and one had died, and that the porridge left by the family was afterwards, as usual, distributed among the poor, who were thereby infected, and one of them, a poor woman, had died."

The enactments of the statute run thus; "Our said Sovereign lord the King, of his blessed disposition *inwardly abhorring* all such abominable offences, because no person can live in surely out of danger of death by that means, if practice thereof should not be eschewed, hath ordained and enacted, by authority of this present Parliament, that the said poisoning be adjudged and deemed as high treason: and that the said Roose for the said murder and poisoning of the said two persons, shall stand and be attainted of high treason."

It was further enacted that Roose should be boiled to death, without benefit of clergy; and that, for the future, every wilful murder by way of poisoning should be deemed high treason, and that every person "which shall be indicted or *appealed* and attainted or condemned" for such treason by poisoning, should be punished with boiling to death "*immediately*" after attainder or condemnation, without benefit of clergy.—Roose was boiled to death in Smithfield.

It will be noticed that whilst the offence of poisoning was treated as high treason, it was so far to retain its character of murder, that the accused, if acquitted upon an indictment, might, afterwards, be boiled on an appeal.

The punishment of boiling was calculated to implant barbarity in the hearts of the vulgar, and, by its intense cruelty, to awaken sympathy for the accused, and odium of the laws. In a parallel case of dismembering by horses that occurred at Rome, Livy observes, “Avertere omnes a tantâ fœditate spectaculi oculos. Primum, ultimumque illud supplicium apud Romanos exempli parum memoris legum humanarum fuit.”

The application of the *lex talionis* in boiling a cook for poisoning, and, still more in treating all future poisoners as cooks, was eccentric. The *Parliamentum Indoctum* could not have evinced a more utter disregard of the qualities and distinctions of offences than did this Parliament by its malaprop folly in designating poisoning as a branch of high treason. It would seem that the Parliament, in Roose's case, did not examine witnesses, but rested satisfied, for the facts, with the King's “blessed remembrance;” the story may seem to have invited scrutiny, a precaution the more necessary in the investigation of offences, the nature of which is provocative of “inward abhorrence.”

It may be suspected that the intemperate wrath of the King which is apparent on the face of this Act, might have been augmented by a personal apprehension that from the poisoner, more than from other assassins, he was unprotected by the halberts of his yeomen. Such an apprehension may account for the singular association of ideas between poison and treason. The King's instructions for making his own bed, (*Archæol.* Vol. IV.) shew that he was not exempt from fears by which those who terrify a nation are sometimes themselves haunted. The prescribed form of royal bed-making is as follows:

“Ceremonial of making the King's Bed compiled by order of the King, and approved by the King in Council.

"Item, a Squire of the Body, or Gentleman Usher, to set the King's sword at his bed's head.

"A Yeoman, with a dagger, to search the straw of the King's bed, that there be none untruth therein: and this yeoman to cast up the bed of down upon that, and one of them to tumble over it for the search thereof.

"To make a cross, and stick up the angel about the bed, and kiss the bolster.

"Item, a Squire of the Body or Yeoman to set a secret page to have the keeping of the bed with a light until the time that the King be disposed to go to it.

"Three yeomen on every side, and a groom at the bed's foot with a torch, each to receive a loaf of bread, a pot of ale, and a pot of wine¹."

The *Earl of Kildare's* attainer by an Act of Parliament passed, in the twenty-sixth year of the reign, is of considerable importance in regard to Irish History. According to the scope of the present work, it is chiefly remarkable as including persons unknown by name or other designation. General warrants have been objected to; this is an example of a general and prospective attainer; as thus,

"And, further, be it enacted that all such persons which be or heretofore have been comforters, abettors, partakers, confederates, or adherents unto the said Earl in his said false and traitorous acts shall in likewise be attainted adjudged and convicted of high treason. And be it further enacted that the same attainer judgment and conviction against the said comforters, abettors, partakers, confederates or adherents shall be as strong and effectual in the law against them and every of them as

¹ It was, perhaps, more from a fear of gossip than of life, that, in another set of regulations, it was ordered that officers of the Privy Chamber are to keep secret every thing said or done, leaving hearkening or inquiry where the king is, or goes, be it early or late, without grudging, mumbiling, or talking of the king's pastime, late or early going to bed, or any other matter.

though they and every of them had been specially, singularly and particularly named by their proper names and surnames, in this Act."

One *Lewis* was attainted in the twenty-seventh year of the reign, for treason, and, also for the murder of two officers who were conveying him, in their custody to London: his sentence, in addition to the pains of high treason, has not been noticed by historians; the Parliament, as in the case of *Roose*, authorized the infliction of a new and barbarous species of punishment, as thus, "And that, before such pains to be ministered unto him for the said treason, *bath the hands* of the same *Lewis* for the said heinous and abominable murders by him committed shall be *stricken off*, and cut from his arms, in terrible example of such other mischievous disposed persons." The treasons, it is stated, were "perfectly known and revealed to the King, and divers of his honourable Council."

(5) *Pardons.*

Parliamentary *Pardons*, whereby the Sovereign admitted the two Houses of Parliament to a participation in his prerogative, present a remarkable phasis of legislation; they give birth to questions regarding the motives of royal condescension. It may be, that some of Henry's parliamentary pardons *call to our remembrance*, the prudent advice of the Trojan,

Timeo Danaos, et dona ferentes.

Two *General Pardons* were passed by the Reformation Parliament. The first of them was their first Act in their first Session. This largess of the King's grace, quite unusually bestowed in advance, might seem to indicate that it was intended as a reward not for services past, but to be performed. The other parliamentary pardon was passed in the 26th year of the reign, at the close of a Session, along with a Subsidy Act: it had been usual to wind up Sessions of Parliament with a Sub-

aidy Act accompanied by a general pardon, which was supposed to assuage its acrimony.

The two General Pardons of this Parliament contain exceptions of dark and aggravated offences, among which will be found ravishments of the King's wards, wastes of his woods, concealments of customs and subsidies, non-payment of fines above the value of five pounds, homages and reliefs not performed or paid, debts incurred to the King's father Henry VII.

The *Pardons for Præmunire* were prodigies of legislation. Three pardons for this offence were passed by the Reformation Parliament, viz. to the Clergy of the province of Canterbury, to those of the province of York, and to the Laity. These pardons were sent by the King to one or other House of Parliament, with his signature, to be converted into laws; they disclose, through the veil of mercy, Henry's injustice, rapacity, violence, and deceit. The motive for the King admitting his Parliament into a participation of his prerogative seems obvious, inasmuch as the effect of these pardons was to clench a subsidy that had been tyrannically extorted from the Clergy.

In the statute for pardoning the *Clergy of the province of Canterbury* (22 Hen. VIII. c. 15) it is recited that the King "calling to his blessed and most gracious remembrance" that the Archbishop of Canterbury, and numerous other ecclesiastical ministers, who had exercised, practised, or executed in spiritual courts and jurisdictions, had fallen into divers dangers of his laws, by things committed contrary to his laws, and especially contrary to the form of the statutes of Provisors and *Præmunire*; and his Highness "having always tender eye, with mercy, pity and compassion towards his said spiritual subjects" granted a pardon in consideration of a subsidy of £100,000. It does not appear that the payment of the subsidy was confined to offenders, but that it was extended to all the Clergy.

The statute for pardoning the *Clergy of the province of York* was not passed till the next Session (23 Hen. VIII. c. 19);

it is similar, in its terms, to the statute relating to Canterbury, only the price of the pardon was to be £18,840. 0s. 10d.

The Pardon to the *Laity* for the offence of *Præmunire* followed that granted to the Province of Canterbury, in the same Session (22 Hen. VIII. ch. 16). The Statute is in these terms: “The King having always most tender zeal, favour, and affection unto his most loving, temporal, and lay subjects, and inwardly remembering the manifold great offences, transgressions, and contempts perpetrated, committed, and done by divers and many out of the number of his said temporal and lay subjects against his Highness, his crown, and jurisdiction royal, contrary to the Statutes of *Provisors* and *Præmunire*, by reason thereof they so offending have incurred into the dangers and penalties of the same Statute, in such wise, that, if His Highness would attempt or pursue those his temporal and lay subjects by the process and course of his laws, they should not only forfeit and lose their lands, tenements, goods, and chattels, but, also, they should be out of his gracious protection. His Royal Majesty moved with most tender pity, love, and compassion, and not minding to use and extend all and singular his penal laws upon his subjects, but, as consideration shall move his Grace, so, in part, or in whole, to remit and mitigate the rigour of the same. Of his *mere motion*, and of his benignity, special grace, pity, and liberality hath granted, and, by the authority of the present Parliament, granteth to all and singular his temporal and lay subjects and temporal bodies politic and corporate, and to every of them his pardon for offences against the statutes of *Provisors* and *Præmunire*. ”

For the better comprehension of these pardons of *Præmunire*, it is necessary to premise some particulars respecting the prosecution, for a *præmunire*, of *Cardinal Wolsey*.—Bishop Gardiner in a letter addressed by him to the Duke of Somerset the Protector, writes, “Now, whether the King may command against an Act of Parliament, and what danger they may fall in that

break a law with the King's consent, I dare say, no man alone at this day hath had more experience with the judges and lawyers than I.—First, I had experience in my old Master the Cardinal, who obtained his Legateship *by our late Sovereign Lord's request* at Rome; and *in his sight and knowledge* occupied the same with his two crosses and maces borne before him many years: yet, because it was against the laws of the realm, the Judges concluded it the offence of a *Præmunire*; which conclusion I take for a law of the realm, because the lawyers so said, but my reasons digested it not.¹"

A series of Statutes, commencing with the reign of Edward I., and terminating with that of Henry IV., had been passed with the object of curbing the exorbitant power assumed by the Pope over ecclesiastical, or supposed ecclesiastical, matters in this country. From the form of the writ by which offenders against these statutes were called upon to make appearance, they were called statutes of *Præmunire*, and, in process of time, the offence of maintaining the Papal power was termed a *Præmunire*. The punishment for this offence was to be placed out of the King's protection, forfeiture to the King of lands and tenements, goods, and chattels, imprisonment during the King's pleasure. A person convicted of *præmunire* wore, in legal language, "a wolf's head," and might have been slain with impunity, until the reign of Elizabeth.

Wolsey was indicted upon a statute of the 16th of Richard II., usually called the Statute of *Præmunire*, of which the gist is, that the offence of *præmunire* should be incurred, by purchasing, in the Court of Rome, Bulls or other instruments, *which touch the King, against him, his crown, regality or realm*, or bringing them into the realm, or receiving them, or making thereof notification, or any other execution within the realm. Lord Herbert informs us, out of the original record, that Wolsey was accused of having obtained Bulls from Rome, which he caused to be

¹ Petyt, *Jus. Parl.* p. 200.

publicly read, and by which he exercised jurisdiction and authority Legatine, to the deprivation of the King's power established in his Courts of Justice; and that, by colour of such Bulls, he bestowed presentations to livings, caused wills to be proved in his court, made visitations, and drew pensions from Abbeys.

To Judges, who were *sent* for the purpose of taking, out of Court, Wolsey's answer to the indictment preferred against him for a *Præmunire*, he said, according to Cavendish, "I have the King's *licence* in my coffer, to shew under his hand and broad seal, for executing the office of Legate; but, because I will not here stand to contend with his Majesty in his *own* case, I will here presently before you confess the indictment, and put myself wholly to the mercy and grace of the King, trusting that he hath a conscience and reason to consider the truth, and my humble submission and obedience, *wherein I might well stand to my trial with justice*¹."

The Statute of Richard II., besides principal offenders, included their "notaries, procurators, maintainers, abettors, fautors, and counsellers." It was assumed, on the part of the Crown, that Wolsey had offended against that Statute, and that the Statute had not been dispensed with by the King, or affected by time or disuse; it was a corollary that every one who had bowed, however reluctantly, to the Legate whom the King had set up, had been his *fautor*, and *abettor*, categories which embraced nearly the whole of the Clergy.

However, as Wolsey had been pardoned after being plundered, so the King was willing to bargain for pardoning his Clergy. It has been above seen that the King's money exaction was enormous, amounting to about a million sterling in the present day, but he was further pleased to include in his stipulations a strain of conscience which at that moment was con-

¹ By letters patent, in Rymer, Henry confirms a Bull in favour of one of his chaplains with a *non obstante* expressly of the statutes of *præmunire*. An historian writes that the "royal permission was a plea which could not have availed Wolsey, and he did not attempt to urge it."

ducive to his ends. The Convocations were required, as an indispensable condition of pardon, to style the King, in their petition for relief, by the title of Supreme Head of the Church and Clergy of England. It is true that the Convocations were allowed to indulge themselves with a saving, “*Ecclesiae et Cleri Anglicani singularem Protectorem, et quantum per legem Christi licet, etiam Supremum Caput ipsius majestatem agnoscimus.*” This compulsory recognition of the Supreme Headship of the Church was afterwards made use of on various public occasions, as though it had the free assent of Convocations; the saving was disingenuously suppressed.

With regard to the Pardon of the *Laity*, Hall relates that, “when the Bill for the pardon of the Clergy was read in the House of Commons, many froward persons would in no wise consent to vote for it unless that all men might be included, arguing that every man who had any thing to do with the Cardinal was in the same case.” It was resolved to send the Speaker to the King before the Bill should be passed. Accordingly Audley, attended by a number of members, waited upon his Majesty, and declared to him, “that his faithful Commons sore lamented and bewailed their chance, in having occasion to think or imagine themselves out of his favour, because he had granted his most gracious pardon to his spiritual subjects for the *Præmunire*, and not to them; wherefore, they most humbly besought his Majesty, out of his wonted goodness and clemency, to include them in the same pardon.” The King answered, “that he was their Prince and Sovereign Lord, and that they ought not to restrain him of his liberty, nor to compel him to shew his mercy. Wherefore, since they had denied to consent to the pardon of his spiritual subjects, which, he said, he might give, without their consent, under his great seal, he would be well advised before he pardoned them, because he would not have it look as if he was compelled to do so.” However a pardon for the Laity was drawn up and signed, which his Majesty sent

to them by his Attorney-General. The Commons returned their most humble thanks, “and much praised his Majesty’s judgment, in that he had denied a pardon to them, when they had unworthily demanded it, and granted it, when he perceived they were so sorrowful and penitent.” A pardon of a *People* has not a parallel in history, and this pardon was rendered the more preposterous from the circumstance, that, in effect, the Lords and Commons pardoned themselves.

In the charges preferred against Wolsey and the Clergy, the Lords make it manifest that no confidence can be placed in their judicial determinations either in Parliament, or in the High Steward’s Court, notwithstanding an imposing array of their names and titles. Never was such a farrago of frivolous and ridiculous accusations heaped together as in the Articles against Wolsey¹; and yet the House of Lords assented to them, and passed them, in a Bill, to the Commons. The Act for pardoning the Clergy, which, in reality, under a deceptive appellation, inflicted an unjust and exorbitant penalty, was passed, by the House of Lords, without trial, or scruple, and amidst plaudits on the King’s “*tender eye*.”

The abject servility of the Spiritual Peers has been adverted to in the Introductory Chapter. In this matter of the purchase-money of pardon, Stokesly, Bishop of London, afforded a pitiful example of kissing Henry’s rod. A multitude of about six hundred of the inferior London Clergy had raised a clamour, at St Paul’s, exclaiming, as Hall tells us, “We never offended in the *præmunire*, for we never meddled with the Cardinal’s faculties; let the Bishops and Abbots which have offended, pay.” Whereupon the *Spiritual Peer* thus addressed the assembly: “My friends! ye all know that we be men, frail of condition, and no angels; and by frailty and lack of wisdom we have

¹ The charge of whispering in the king’s ear was an appeal to Henry’s prejudices; in his orders for his household the king’s barber is warned not to “frequent the company of misguided women, for fear of danger to the king’s most royal person.”

misdemeaned ourselves towards the King our sovereign lord, and his laws; so that *all we of the Clergy* were in *praemunire*, by reason whereof all our promotions, lands, goods, and chattels were to him forfeited, and our bodies ready to be imprisoned. Yet his Grace, moved with pity and compassion, demanded of us what we could say, why he should not extend his laws upon us. Then the fathers of the clergy humbly besought his Grace for mercy. Then for all our great offences, we had but little penance; for, when he might, by the rigour of his laws, have taken all our livelihoods, he was contented with one hundred thousand pounds, to be paid in five years. And, though this sum may be more than we may easily bear, yet, by the rigour of his law, we should have borne the whole burden."

In a reign remarkable for the prolixity of its preambles, the curtness of that prefixed to a *private pardon* may be regretted, especially as a reason for pardoning *murder*, and that by Act of Parliament, might be expected to have been given:

"Please it your Highness, for *divers considerations*, that it may be ordained, enacted, established and granted by your Highness, with the assent of the Lords and Commons, that Richard Southwell and others (six other persons by name) may be clearly pardoned, discharged and released of the murder, slaying, manslaughter, felony and interfection of Sir William Penyngton knight, and of all and singular murders, homicides and felonies and all other things touching or concerning the death of the same Sir William Penyngton, and also of accessories and forfeitures of, for, or in anywise concerning the premises¹."

It has been noticed, in the Introductory Chapter, that there were several pardons, to be found in Rymer, of *Bishops*; a pardon according to the following tenor was granted, by the Reformation Parliament, to the Bishop of Norwich: "Forasmuch as the

¹ The pardoned murderer Southwell is described as of Rysing, Esquire; late of Rysing, Esquire; late of Cranworth, Esquire; late of London, Esquire; late of London, Gentleman; as cousin and heir of Robert Southwell, Knight; concluding, "or by whatsoever other name or names he be perceived, accepted, and known."

Bishop of Norwich, in the 25th year, had been convicted, on his own confession, before the Court of King's Bench upon the statute of the 26th year of Richard II. against suing to the Court of Rome for any thing touching the King; and the Bishop had been guilty of certain offences and contempts contemptuously committed against the form and effect of that statute;—Nevertheless, His Highness, considering the great age, impotency and other debilities of the Bishop, and his manifold humble suits and petitions, is mercifully and benignly contented that the Bishop, from the 24th of February in the twenty-fifth year of the reign, by the authority of the present Parliament, be pardoned as well for any offences against the statutes of *præmuniture*, as for any against *any other* statute, or against the *Common Law*."

(6) *Delegated Legislation.*

The Reformation Parliament, as will be seen in subsequent chapters of this work, conferred on the King a power of annulling in the whole, or in part, at his discretion, certain of its Acts, and, in some instances, even of *reviving* enactments which he had annulled; delegations of legislative authority, which will probably be regarded as an excess of the constitutional competency of Parliament:

The question had been raised, in the reign of Henry VII., and, according to some great authorities, decided in favour of the Crown, that an Act of Parliament could not restrain the King's *Dispensing Power*¹. Numerous precedents, in Rymer, occur, during the period of the Reformation Parliament, of dispensations with particular statutes of that and former Parliaments by name, especially some Acts of public benefit respecting pluralities, and non-residence of the clergy; besides the use of such general terms as, "ordinationibus et constitutionibus ecclesiasticis, nec non actibus, sive statutis in Parliamentis nostris quodammodo

¹ A Dispensation of Henry VIII. from College Statutes, runs, "Dicti Collegii nostri statutis, etiam juramento firmatis, non obstantibus."

editis, sive *in posterum edendis*, in contrarium faciendis, non obstantibus quibuscunque." This dispensing power was commonly assumed by the King, as a branch of the prerogative; but dispensations and licences by the King are expressly authorized in various statutes of the Reformation Parliament, whereby the pith of their enactments was eaten out at the King's will.

The Parliament, long before the celebrated Proclamation-Act, authorized, in several instances, the imposition of penalties by Proclamation. This species of legislating was frequently practised without the express concurrence of Parliament, but with its acquiescence. Even the members of the Houses themselves sometimes quailed under it. It was ordered, in a Proclamation of Henry, "that all nobles and gentlemen as have repaired to the Parliament, do immediately depart into their several counties, on pain of his Majesty's displeasure, and to be further punished as to him, or his Highness's Council shall be thought convenient."

CHAPTER IV.

REVENUE.

THE Income of the Crown, about the commencement of the Reformation Parliament, was augmented by enormous accessions from the confiscated domains, mansions, and treasures of Buckingham¹ and Wolsey. Yet this Parliament was not less assiduous than those which preceded or followed it in making additions to the royal rent-roll, and filling Henry's coffers. In its first Session it indulged the King in a realization of Catiline's promise, viz. that of having *tabulas novas*. Subsequently it glutted his cupidity for forfeitures by numerous Acts of Attainder and by penal restrictions introduced into every occupation of traffic or amusement, and even into the wearing of dress, attended with profit from licenses and dispensations. It gave him the rich spoils of monasteries, with the First Fruits and Tents of the Clergy, whom it had grievously mulcted, under the pretext of being *fautors* of Wolsey. It lent its aid to his dealings in estates, called exchanges, which may be suspected to have resembled a certain Homeric transaction, wherein a suit of brazen armour was exchanged for one of gold. An anxiety for the loss of wardships, marriages, and other feudal profits², occa-

¹ A vestige of Buckingham's forfeitures is extant in Magdalene College, Cambridge, originally called *Buckingham College*, and in its endowments; so that from his ruin, as from that of Wolsey, has sprung a "nursery of refined wits."

² Sir Thomas Smith writes that the king, having so many wards, usually sold them to those who sought to make the most advantage of them, as of an *ox*, or *other beast*; he observes that, to seek to deprive the king of this prerogative, would be like going about to take the *club out of Hercules' hand*. In Ellis's *Collections* are letters of the king proposing husbands to his female wards. In the first series of these *Collections* is a letter from the king to the citizens of London, on their neglect to furnish the purveyor of his wines with carriages and horses for their con-

sioned the Statute of Uses, which extinguished for a time the testamentary power over lands. By a Statute of the 27th year of the reign, *purveyance* was confirmed as well within liberties and franchises as without: a *non obstante* dispensation of which Statute granted to the Dean and Chapter of St Paul's for themselves and tenants, shews that this odious branch of the prerogative was capable of relaxation without material detriment to the royal larder. Secretary Paget of this reign has left a *minute* expressing reasons why it was better to get money wanted by means of a benevolence, than through Parliament. A solitary Subsidy Act in the period under review reads, among such exactions, like the modicum of bread among the more costly and objectionable items in Falstaff's tavern-bill.

At the commencement of the Reformation Parliament, Henry VIII. stood notorious as a robber of his People. During long and illegal intermissions of Parliament, he had, under deceitful pretences, levied arbitrary contributions on his subjects. The Reformation Parliament, in its first Session, ratified this spoliation by cancelling the illusory securities which he had made use of for its perpetration.

The Title of this royal Insolvent Act is as follows:

“An Act for the releasing unto the King his Highness of such sums of money as were to be required of him by any of his subjects for any manner of loan by letters missive or other ways or means whatsoever.”

The *Preamble* contains a long recital of alleged benefits conferred by the King on the nation, such as the “repressing of a damnable schism in the church,” the “modifying the inordinate ambition of those who aspired to the monarchy of Christendom,” the “notable and excessive treasure which his Highness had employed in defence of the church and faith catholic,” the “new,

veyance from London to Abingdon. He writes, “of which your demeanour herein we cannot a little marvel;” and tells them that, “as ye intend to please us, ye will effectually endeavour for the quick expedition hereof without any failing.”

excellent, and marvellous charges for the supportation of sundry armies by sea and land," the "manifold contributions outward to keep his own subjects in rest," whereby this people had been free from the dangers by which most part of Christendom had been infested, viz. "The *great Head and Prince of the World* brought into captivity, cities spoiled, brent and sacked. Men women, and children found in the same slain and destroyed, virgins, wives, widows, and religious women ravished, holy churches and temples polluted and turned into profane use, the *relics of the holy saints* irreverently treated, hungry dearth and famine by means thereof ensuing, and, generally, over all depopulation, waste, destruction, and confusion."

Considering also that his Highness, in and about the premises had been fain to employ not only the contributions of his subjects, but also "notable and excellent sums out of his own treasure, which else his Grace might have kept to his own use, amongst which manifold great sums so employed, his Highness also, as is notoriously known, and as doth evidently appear by the accounts of the same, hath to that use, and none other, converted all such money as by any of his subjects hath been advanced to his Grace by way of prest¹, or loan, either particularly, or by any taxation made of the same."

It was, thereupon, enacted, that the Parliament "of one mind and consent do for themselves, and all the whole body of this realm whom they represent, freely, liberally, and absolutely give and grant unto the King's Highness all and every sum and sums of money which to them or every of them is, ought, or might be due by reason of any money, or any other thing to his Grace at any time heretofore advanced or paid by way of prest or loan, either upon any letter or letters under the King's Privy Seal, general or particular, letter missive, promise, bond, or obligation of repayment, or by any *taxation or other assessing by*

¹ *Prest*, from *premo*, *pressi*, and so was expressed in the case of soldiers, "apres ceo qu'ils fueront prest."—Sir M. HALE.

virtue of any commission or commissions, or by any other means whatsoever it be heretofore passed for that purpose. And utterly, frankly, and *most willingly and benevolently* do remit, release and quit claim to his Highness, his heirs and successors for ever all and every the same sums of money and every parcel thereof." His Highness is then "most heartily and lovingly beseeched" that, by the authority of Parliament, all the securities for his debts should thenceforth be void and of none effect.

The King's assent is thus expressed, "Our Lord the King thanks the Lords and his Commons for their good will (*de leur bonne cœur*) in making this grant, and so his Majesty accepts the same with all its contents, and approves thereof."

The nature of the security given to the King's debtors upon loans such as were vacated by this Act, appears from a contemporary MS. containing instructions to the King's commissioners, in the possession of Mr Hallam ; the form was as follows :

" We, Henry VIII., by the grace of God, King of England and of France, Defender of the Faith, and Lord of Ireland, *promise*, by these presents, *truly* to content and repay unto our trusty and well beloved subject, *A. B.*, the sum of — which he hath lovingly advanced unto us by way of loan, for defence of our realm, and maintenance of our wars against France and Scotland. In witness whereof we have caused our Privy Seal to be set and annexed — day of —, the fourteenth year of our reign."

In the *Preamble* of the Statute, it will be noticed, that the Pope is designated as the *Great Head and Prince of the World*, which contrasts strangely with the subsequent anxiety of this same Parliament to restrict him to the title of *Bishop of Rome*. The virgins, and churches, and relics of saints, with other horrors, appear, like the contents of several of Henry's preambles, to have been introduced as a prelude to enormous enactments, which it was deemed convenient to excuse by conjuring up frightful visions of alternative woe and perdition.

With regard to the *enactments*, never had so unconstitutional an Act been passed, or has been passed, except later in Henry's reign; for it is a sanction of taxation without the consent of Parliament. Never, with the same notable exception, has dishonesty been so publicly avowed. The King is released from his *promises*, in a manner undistinguishable from Popish dispensation and absolution; and, with consummate impudence, the Parliament "most willingly and benevolently" discharge the King from his debts behind the backs of many, if not all, of his creditors.

The *contemporary complaints* produced by this statute from persons whose money had been "most willingly and benevolently" given to the King by the voice of their representatives, are thus described by Hall, the contemporary chronicler. "When this release of the loan was known to the commons of the realm, Lord! how they grudged and spake ill of the whole Parliament! For almost every man counted it his debt, and reckoned surely on the payment of the same, and, therefore, some made their wills of the same, and some other did set it over to other for debt; and, so, many had loss by it, which caused them sore to murmur, but there was no remedy¹."

The only *Subsidy* Act of the Reformation Parliament was one passed in the twenty-sixth year of the reign. A subsidy was therein granted to the King of a tenth and fifteenth, and a poundage rate on lands and goods, in which aliens were doubly charged. In the Preamble of the Act there is a long recital of Henry's services to the country during twenty years; by all which, it is concluded that the "Parliament did perceive the entire love and zeal which the King bore to his people, and that he sought not their wealth and quietness only for his own time, being a man mortal, as well as others, but did provide for them

¹ This Act is ignored by a recent eulogist of Henry; he questions the reality of hardship from a similar transaction later in the reign, on the ground of absence of "*contemporary complaint*."

in all time to come; that, therefore, the Parliament thought, that, of very equity, reason and good conscience, they were bound to shew a like correspondence of zeal, gratitude, and kindness." Notice is taken of Irishmen who are designated as a "wilful, wild, unreasonable, and savage people." There is significant silence on a prominent theme in former Subsidy Acts, that of the King's services to his holy father the Pope.

The Reformation Parliament gave to the King three hundred and seventy-six Monasteries. Lord Coke, in his fourth Institute, takes particular notice of a passage in the statute whereby this object was effected. He writes "*Ad faciendum populum* these possessions were given to the King his heirs and successors to do and use therewith his and their own wills, to the pleasure of Almighty God, and the honour and profit of the Realm." And he observes, in connection with this pretext, that "when any plausible project is made in Parliament to draw the Lords and Commons to assent to any Act, if both Houses do give, upon the matter projected and promised, their consent, it shall be most necessary (they being trusted for the Commonwealth) to have the matter projected and promised (which moved the Houses to consent) to be established in the same Act; lest the benefit of the Act be taken, and the matter projected and promised never performed, and so the Houses discharge not the trust reposed in them. This fell out in the reign of Henry VIII." He then notices the two statutes for the Dissolution of the Monasteries; observing that "the members of both Houses had been informed in Parliament," amongst other promises which he specifies, that the "Monasteries should never, in time to come be converted to private use, and the subject never again be charged with subsidies, fifteenths, loans, or other common aids." He adds, "Now observe the catastrophe;" and, then, among other levies on the people, he mentions that the King "since the dissolution of the Monasteries,

exacted divers loans, and" (what is important as coming from Lord Coke) "received the same, *against law.*"

Upwards of a score of statutes were passed by the Reformation Parliament for the *assurance* of lands to the King. Many of these afford greater or less presumption of a balance of profit accruing to the royal land-jobber. Some suspicion, for example, may attach to an Act of the 25th year of the reign for confirming a conveyance to the King of the manor of Pyssowe, in Herefordshire from Lord Scrope: which Act provides, "And because it is doubted whether that the same Lord Scrope, at the time of making the said indenture were, or yet is of his full age of twenty-one years or not; be it enacted, that the said indenture shall stand good, and available in law to the use of the King, *as if* the said Lord Scrope had been at his full age."

Manors in Wimbledon, Putney, Mortlake, Roehampton and Shene, which had been parcel of the Archbispopric of Canterbury, were transferred to the King by a conveyance recited in a statute of the 27th year of the reign: the consideration is thus vaguely stated: "For sundry and many considerations the King's majesty moving, and in accomplishment of divers bargains, sales, agreements, and conclusions before this time had and concluded."

The Priory of Christ-Church, in London, before the Acts for the Dissolution of Monasteries, granted their possessions to the King; which grant is confirmed by a statute of the 25th year of the reign, wherein the inducement is stated to have been "divers considerations them moving."

Upon the promotion of the Abbot of St Benet to the Bishopric of Norwich, an Act was passed, in the 27th year of the reign, entitled "An Act concerning the assurance of all the temporalities belonging unto the Bishopric of Norwich, unto the King's Highness and his Heirs." By this Act the King and the Abbot-Bishop (for he was to hold the abbey with his bishopric) divide the temporalities of the See of Norwich between them.

Instruments of *Exchanges*, which are confirmed by statutes of the Reformation Parliament, between the King and numerous persons, especially Abbots, sometimes contain a recital as well of the conveyances to the King as the reciprocal grants by Letters Patent. We cannot, indeed, at this day, form such a comparison of values as to enable us to judge whether these exchanges partook, or not, of the character of the Homeric exchange above alluded to; but it may be surmised, that, in point of locality at least, the Abbot of Westminster would have preferred lands in St Margaret's parish and elsewhere in Middlesex, which he conveyed to the King, to what he took in exchange, viz. lands in Berkshire, Wiltshire, and Hampshire. It may be doubted, also, whether the Abbot of Waltham was morally or legally justified in parting, by exchange or otherwise, with a gift of the founder or a benefactor of his Abbey, because, as the Act states, "To the which manor and house the King's Highness hath a singular pleasure and affection to repair and resort unto, for the great consolation and comfort of his most royal person."

CHAPTER V.

AGRICULTURE.

THE Georgics of the Reformation Parliament have left no trace in our present laws; interdictions of pasturage, sowings for the benefit of linen-drapers, parliamentary onslaughts on crows, if they were ever expedient, were only of temporary utility.

(1) *Flocks of Sheep.*

The principal statute relating to *Agriculture* was passed by the Reformation Parliament in the twenty-fifth year of the reign. It is one of a series of laws made to prevent the prevalent conversion of arable land into pasturage; it has particular reference to one of the consequences of such conversions, that of multitudinous flocks of sheep.

In the Preamble of the Act, it is recited that “Forasmuch as sundry persons to whom God of his goodness hath disposed great abundance of *moveable* substance, within a few years have daily studied, practised and invented ways and means how they might accumulate and gather together into a few hands as well great multitude of farms, as great plenty of cattle, and, in especial, *sheep*; putting such lands as they can get to pasture, and not to tillage, whereby they have not only pulled down churches and towns, and *enhanced the old rates of the rents* of the possessions of this realm, or else brought them to such excessive fines that no poor man is able to meddle with them; but also have raised and enhanced the *prices* of all manner of corn, cattle, wool, pigs, geese, hens, chickens, eggs, and such other, almost double above the prices which have been accustomed. By reason whereof, a marvellous multitude of the peo-

ple of this realm be not able to provide meat, drink, and clothes necessary for themselves, their wives and children; but be so discouraged with misery and poverty, that they fall daily to theft, robbery, or other inconveniences, or pitifully die from hunger and cold. And as it is thought by the King's loving subjects, that one of the greatest occasions that moveth and provoketh those greedy and covetous people to accumulate and keep in their hands such great portions of the lands of this realm from the occupying of the poor husbandmen, and so to use it in pasture and not in tillage, is only the great profit that cometh of sheep, which now be come to a few persons' hands of this realm, that some have 24,000, some 20,000. By the which, a good sheep for victual that was accustomed to be sold for two shillings and fourpence, or three shillings at most, is now sold for six shillings or four shillings at the least; and a stone of clothing wool, that in some shires was accustomed to be sold at eighteen pence, or twenty pence, is now sold for four shillings, or three shillings and four pence at the least. Which things thus used be principally to the high *displeasure of Almighty God*, to the decay of the hospitality of this realm, to the diminishing of the King's people, and to the let of cloth-making, whereby many poor people have been accustomed to be set on work; and, if remedy be not found, it may turn to the utter destruction and dissolution of the realm, which God defend."

It was thereupon enacted that no person should keep above two thousand sheep of all kinds, under pain of forfeiting for every sheep above that number, three shillings and fourpence, half to the King; and that no person should take for life, years, or will, above two holds of houses of husbandry whereunto lands were belonging, nor to the number of two farms, unless he were resident in the same parish with one of them, under the like penalty. It was provided that the Act should not apply to spiritual persons keeping sheep on their own lands, nor to

persons keeping above two thousand sheep for the necessary expences of their households, nor to persons keeping above that number on their own lands who were seized of inheritance in possession or use, or were tenants in dower or by the courtesy. Previous statutes of Henry VII. and Henry VIII. were confirmed, of which the provision chiefly remarkable was that fields converted from arable into pasturage might be seized until their reconversion, with a saving of such arable lands as had been converted into the areas or inclosures of *deer-parks*.

It will be observed that the mischiefs complained of in these Acts, and the displeasure of Almighty God, are stated not to attach to flocks of whatever size fed on the lands of owners of estates held in fee-simple or fee-tail, or to lands converted into parks for the recreation of the aristocracy; the flocks of spiritual persons, also, were declared, by the statute, to be exempt from divine wrath. The increase of sheep is stated to have increased the prices of mutton and wool; and it is admitted that a "marvellous multitude" of the people were reduced, without any fault of their own, to the alternative of starving, or thieving and robbery.

The allegations of the Preamble are in a great measure to the same effect as the representations of Sir Thomas More, who writes, in his *Utopia*, “Oves vestræ quæ tam mites esse, tamque exiguo solent ali, nunc tam edaces atque indomitæ esse coeperunt, ut homines devorent ipsos, agros, domos, oppida depopulentur. Nempe quibusunque regni partibus nascitur lana tenuior, atque ideo pretiosior, ibi nobiles, et generosi, atque Abbates aliquot, sancti viri, non his contenti redditibus fructuisque annuis, qui majoribus suis solebant ex prædiis crescere, nec habentes satis, quod otiosè et lautè viventes, nihil in publicum prosint, nisi etiam obsint, arvo nihil relinquunt, omnia claudunt pascuis, demoluntur domos, dirunt oppida, templo duntaxat stabulandis ovibus relicto..... Atque hac ratione fit ut multis in locis annonæ multo sit carior. Quin lanarum quoque adeo increvit

pretium, ut a tenuioribus, qui pannos inde solent apud vos conficere, prorsus emi non possint, atque ea ratione plures ab opere ablegantur in otium."

The principal cause of the conversion of arable fields into pastures, at this period, seems to have been the rapid decay of the feudal system in England. The Lords of large domains had, for some years, been induced to dismiss a great part of their petty tenantry, partly from an increased desire for luxuries, leading them to seek the utmost profit from their lands, and partly owing to laws which deterred them from keeping in pay an army of retainers for pride and power¹.

In addition to this cause of enormous flocks, may be mentioned the unscientific character of husbandry, which began to be improved only when land became an object of commerce; the difficulties of conveyance by land or water; and the impolitic interference of the government, as, for instance, by laws against regrating and forestalling, of which Lord Coke has preserved this notable example. "It is against the *common law* of England to sell corn in sheafs, before it is threshed and measured, for that, by such sale, the market, in effect, is forestalled." Henry himself occasioned prejudice to the tillage of the country by his numerous proclamations, issued, in time of peace, for prohibiting the exportation of corn².

With regard to the rise of rents and increase of prices complained of in the statute, this complaint is echoed in many a quaint sermon of Latimer. But it would seem that these phenomena were owing principally to the increase of the precious metals consequent on the discovery of America; and, in some degree, to Henry's unprecedented debasement of the coinage. On the subject of Latimer's lamentations Mr Jacob, in his treatise on the Precious Metals, writes, "The Bishop was evi-

¹ See this subject amply discussed in the Introduction to Brodie's *British Empire*.

² Barrington on the Stat. 15 Hen. VI., from the Collection of Proclamations belonging to the Society of Antiquaries.

dently unaware that the influx of gold and silver from the new world was producing a gradual increase of prices, and, like other persons in that age, sought, with more zeal than judgment, to find the cause of this extraordinary phenomenon. He attributes this, which he treated as a great evil, to enclosures, to sheepwalks, to regrators, forestallers, and to any cause but the true one." That an enormous multiplication of sheep fit for mutton and carrying wool on their backs should have raised the prices of mutton and wool is a consequence which may not be implicitly credited on the authority of an Act of Parliament.

Lord Bacon, in his *History of Henry VII.*, observes that the statute of that King upon the subject of the conversion of arable lands into pasture, "did amortise a great part of the lands of the kingdom unto the hold or occupation of the yeomanry, or middle people, of a condition between gentlemen and cottagers or peasants," and that "the King knew full well, and had not forgotten, that, upon a decay of people and of towns there ensued withal a decay of subsidies and taxes." About the time, however, when Lord Bacon was writing his history, he must have been aware, that, in the fourth reign after Henry VII., notwithstanding the temporary motives which he assigns for the pasture laws of that King, the complaint of shepherds being substituted for ploughmen continued undiminished. So late as the year 1597, he expresses himself, as a member of the House of Commons, when introducing a Bill into Parliament against Inclosures and depopulation of towns and houses of husbandry and tillage, that he had perused the preambles of former statutes upon the subject, and found that "the inconveniences recited in them were then scarce out of the shell, but were now fully ripened." And he observes, "And though it may be thought very prejudicial to lords that have inclosed great grounds, and pulled down even whole towns, and converted them into sheep pastures: yet, considering the increase of people, I doubt not that every man will deem it in this point praise-

worthy to revive former moth-eaten laws." Private interest, which, owing to temporary causes, had led to an inconvenient suspension of the plough, occasioned, without arbitrary and ineffectual interference with the use and enjoyment of property, its permanent resumption.

(2) *Hemp and Flax.*

Another Act concerning Agriculture was passed in the 24th year of the reign. As by the former Act, pasturage was restricted for the sake of tillage, so in this tillage was controlled for the benefit of linen-drapers, though ostensibly for the repression of *otiosity*, and the balance of trade.

The Act recites that "The King, *calling to his most blessed remembrance* the great number of idle people daily increasing throughout his realm, supposeth that one great cause thereof is by the continual bringing into the same the great number of wares and merchandises made and brought out of parts beyond sea into this his realm, ready wrought by manual occupation." His Majesty perceived, that marvellous great quantity of linen clothes are daily brought into the realm from beyond sea; by reason whereof *strange countries be greatly enriched*; and, on the contrary, the inhabitants of this realm were compelled to buy foreign linen cloth amounting to inestimable sums of money. And the men and women of the realm, who might be set to work in manufacturing linen cloth, lived then "in idleness and *otiosity*, to the high *displeasure of Almighty God*, great diminution of the King's people, and extreme ruin, decay, and impoverishment of this realm."

It was, therefore, enacted, that every person having three-score acres of arable land or pasture that had been tilled within fifty years, or of arable land and such pasture as was apt for tillage, should sow yearly one quarter of an acre with flax-seed or hemp-seed.—*Deer-parks* are especially excepted. Harrison writes that "a twentieth part of the realm is employed on deer and conies."

(3) *Crows.*

That the Agriculturist should not be in want of the direction of the Legislature in the management of his own business, an Act was passed, in the twenty-fourth year of the reign, touching the destruction of crows. The tenor of this Act is consonant to many enactments of the reign for the destruction of the human species, and closely resembles Henry's proclamations of martial law.

In the Preamble of the Act it is recited, that, "Forasmuch as *innumerable number* of rooks, crows and choughs do daily breed, and increase throughout this realm; which rooks, crows and choughs do yearly devour and consume a wonderful and marvellous great quantity of corn and grain of all kinds; that is, to wit, as well in the sowing of the same corn and grain, as also at the ripening and kernelling of the same: and, over that, a marvellous destruction and decay of the covertures of thatched houses, barns, ricks, stacks, and other such like. So that if the said crows, rooks, and choughs should be suffered to breed and continue, as they have been in certain years past, they will undoubtedly be the cause of the great destruction and consumption of a great part of the corn and grain which hereafter should be sown throughout this realm; to the great prejudice, damage, and undoing of the great number of all the tillers, husbands, and sowers of the earth within the same."

It was, therefore, enacted that every person "as well *spiritual* as *temporal*" should do as much as in him reasonably may be, to kill all crows, rooks, and choughs, under penalty of a "grievous amerciament." Every parish, township, hamlet, borough or village within the realm was to provide *crow-nets* under penalties. Inhabitants of districts were to meet annually to "agree and conclude how and by what means it shall be best possible to destroy all the young breed of the said crows, rooks,

and choughs for that year." The taker of crows was to receive after the rate of 2*d.* the dozen. It was provided that no person, under colour or authority of that Act, should take or kill any pigeons.

As the propensities of crows, rooks, and choughs have not altered since the reign of Henry VIII. we may judge, from what is passing before our eyes, of the wisdom and humanity of this interneclial war with birds. Mr Selby, the eminent naturalist, remarks that the rook has been "erroneously viewed in the light of an enemy by husbandmen; and, in several districts, attempts have been made to extirpate the breed. But, wherever this measure has been carried into effect, the most serious injury to the corn and other crops has invariably followed, from the un-checked devastations of the grub and caterpillar." He mentions also the utility of the rook, in the southern counties, in freeing lands from the grub of the cockchafer, and, going northward, he says, "In Northumberland I have witnessed the usefulness of the rook in feeding on the larvæ of the insect called by the name of *Harry Longlegs*, which is particularly destructive to the roots of grain and young clovers."

With respect to the clause providing that pigeons should not be construed to be included with crows by the *equity* of the Act, it may be suspected that this anxiety to prevent a legal mistake between the two species arose from the rank of pigeon-holders. Hartlib (in his *Legacy of Husbandry*) reckons that there were, in his time, 26,000 dove-houses in England, and he supposes their annual consumption of corn to have been 13,000,000 bushels. The building of a dove-house appears to have been a necessary article of expense to monasteries; a gigantic dove-house in Herefordshire, containing 666 holes, which was built by the Hospitalers, and is mentioned in one of their leases of the date of 1512, is described in the *Archæologia* (Vol. xxxi.); it appears to have survived the lapse of centuries unimpaired.

It was not deemed necessary to exclude *game* from the equity, though they were within the mischief of the statute. They were not, however, left without protection. Henry, in the 27th year of his reign, issued his Proclamation reciting his great desire "to preserve the partridges, pheasants and herons from his Palace at Westminster to St Giles's in the Fields, from thence to Islington, Hampstead, Highgate and Hornsey Park; and that, if any person, of any rank or quality, presume to kill any of these birds, they were to be imprisoned, as also to suffer such other punishment as to his Highness *should seem meet*¹."

¹ Coll. of Procl. penes Antiq. Soc., Barrington on Stat. ii Hen. VII.

CHAPTER VI.

THE POOR.

CAPTAIN Poverty with his cousin *Necessity* were stated, in a speech addressed to two Dukes by a labourer, four years before the meeting of the Reformation Parliament, to have been the principal instigators of an insurrection in Suffolk. The *Captain* would appear to have used arguments derived, first, from the normal condition of labourers, and, secondly, from the burden of an illegal tax. As to the first, it was said by him, and echoed by his followers, “We live not of ourselves, but by the substantial occupiers of this county, and they give us *so little wages* for our workmanship, that scarcely we be able to live, and thus in penury we pass the time, we, our wives and children¹.” And, next, as to the second grievance, “And if they by whom we live be brought in that case that they of their little cannot help us to earn our living, then must we perish and die miserably. The clothiers have put all these people, and a far greater number, from work, the husbandmen have put away their servants, and given up household. They say the King asketh so much that they be not able to do as they have done before this time.” The contemporary chronicler, Hall, observes upon these complaints, that the Dukes of Norfolk and Suffolk, to whom they were addressed, knew well that they were true.

Two Statutes were passed by the Reformation Parliament for the government of the Poor, the latter of which, as hath been mentioned in the Introductory Chapter, and, probably, the first of them, was the veritable production of the King.

¹ This was subsequent to the Statute of Wages, which has been erroneously supposed to have imposed fixed rates upon masters.

By the first of these statutes, passed in the 22nd year of the reign, licenses were grantable for begging within limits, with a provision "that if any such *impotent* person do beg within any other place than within such limits, then the Justices, King's Officers, and Ministers shall, at their discretions, punish all such persons by imprisonment in the stocks by the space of two days and two nights, giving them only bread and water." Impotent persons begging without a license were to be "stripped naked from the middle upwards," and to be scourged.

"Men or *women*, being whole and mighty in body," who were found vagrant, were subject "to be had to the next market-town, and there to be tied to the end of a cart, naked, and to be beaten with whips throughout the same town till his body be bloody by reason of such whipping." After flagellation the vagrants were to be compelled to take an *oath* for returning to their birth-places, or places where they had lived for the preceding three years, and for applying themselves to labour. *Pardoners*, persons *using unlawful games and plays*, or feigning a knowledge of physic, physiognomy, palmistry, dreams, and fortunes, with other "like fantastical imaginations," were to be "whipped at two days together, after the manner above rehearsed. And if they eftsoons offend in the same or any *like* offence, to be scourged two days, and the third day to be put upon the pillory, from nine o'clock till eleven in the forenoon of the same day, and to have one ear cut off; and if they offended the third time, to have like punishment of whipping and the pillory, and to have the *other ear* cut off."

The *King's own Act* against Vagrants was passed in the twenty-seventh year of the reign. In its Preamble, the previous Act passed in the twenty-second year of the reign is referred to, and is stated, with great truth, to have been defective, inasmuch as it was not provided thereby "how and in what wise poor people and sturdy vagabonds should be ordered at their repair into their *countries*; nor how the inhabitants of every hundred

should be *charged* for the relief of the same poor people, nor yet for the setting and keeping in work and labour of the aforesaid valiant vagabonds."

It was, thereupon, enacted, that Officers of cities, towns, and parishes, on the repair of poor and impotent creatures and sturdy vagabonds to the *countries* to which they had been remitted, "should succour, find, and keep all and every the same by way of *voluntary* and charitable alms," to be collected on Sundays and festivals in parish *boxes*, "in such wise as none of them of very necessity shall be compelled to go openly in begging to ask alms; and that all, and every the said sturdy vagabonds should be set and kept to continual labour, in such wise as by their said labours they and every of them may get their own living, with the continual labour of their own hands."

The Clergy were to *exhort* the people bountifully to extend their alms for the purposes of the Act in all and every "their sermons, collations, biddings of beads, as in times of all confessions, and of making wills and testaments."

Rufflers, sturdy vagabonds, and valiant beggars, after such time as any of them had been once whipped, and sent to any place "if they shall happen to wander, loiter, or idly use themselves and play the vagabonds, or willingly absent themselves from labour they have been appointed to," might be sentenced by a Justice of the Peace, not only to be whipped again, but also to have "the upper part of the gristle of his right ear clean cut off, so that it may appear for a *perpetual token*, after that time, that he hath been a *contemner of the good order of the commonwealth.*" Constables and the most substantial inhabitants of every parish were to forfeit five marks for every time they refused, when ordered, to whip, or cut off the gristle of an ear. For the third act of vagrancy committed by one the gristle of whose ear had been cut off clean, the punishment was *death as a felon*, and *enemy of the commonwealth*; and, in order not to lose

a chance of profit, however remote, the pauper was condemned to "forfeit *all his lands* and goods."

"And for the avoiding of all such inconveniences and infections as often time have, and daily do chance among the people by common and open doles, and that most commonly unto such doles many persons do resort which have no need of the same," it was enacted that "no manner of person should make or cause to be made any such open dole, or should give any ready money in alms unless unto the common *boxes*, upon pain of forfeiting *ten* times the amount of all such ready money as should be given in alms, contrary to the Act."

It was carefully provided, that in places "where the *voluntary* and *unconstrained* alms and charity of the parishioners with such money as shall be added and given from any *Monasteries* or other persons, bodies politic, corporate or other, will not suffice to the sustentation of the poor, needy, and indigent people, being within the limits of such contribution," the penalty of twenty shillings a month, imposed on officers who neglected to execute the Act, was not to be incurred. It was further provided, in the same vein, that none should be "constrained to any such certain contribution but as their *free wills* and charities shall extend."

With regard to the employment of *young persons*, it was enacted, that Justices of the Peace, and other officers, should have authority to "take up all and singular children within their limits that be not grieved with any notable disease or sickness, and being under the age of *fourteen* years, and above the age of *five* years, in begging or *idleness*, and to appoint them to masters of husbandry or other crafts or labours, to be taught; whereby they shall get their livings when they shall come to age, giving to them of the said charitable collections, as it may be conveniently sustained and borne, a raiment to enter into such service." And if any above the age of *twelve* years and under the age of *sixteen* years refused service, or departed from the same

without reasonable cause, they were to be "openly whipped with rods" and be sent again into service. And it was enacted, that, "if any person or persons do refuse to execute and do the said punishment, at the commandment of any of the said Governors, Aldermen, Justices of the Peace, and others the said Officers and Ministers, then he or they so refusing the same shall be set in the stocks by the space of two days, without having of any other sustenance, saving only bread and water."

It was, further, enacted that no person should "use, keep, or maintain any open playing house, or place for common *bawling*, dicing, carding, closhe, *tengs*, or *other* unlawful games, taking money for the same or other gain, upon pain to forfeit five marks for every month."

The Act was not to extend to *Friars Mendicant*, because "they had little or nothing to live upon, except the alms of Christian people."

The most prominent feature of these Vagrant Acts is their inhumanity. The infliction of death for a repetition of vagrancy, in Henry's own Act, exhibits a disproportion between punishment and crime that betokens a Legislature unversed in the first principles of jurisprudence. The scourging at a cart's tail, through a town, naked, and "till the body be bloody," the long confinement in the stocks upon bread and water, the pillory, the loss of both ears, and, that savage idea of the King, the cutting of the "upper part of the gristle of the right ear clean off," the public whipping inflicted expressly on *women*, are the punishments of a Legislature of barbarians or fiends. Henry's Act bears signal witness to its own revolting cruelty; persons declining to assist in cutting off gristles of ears were to be subject to a penalty of five marks; such as testified similar reluctance in whipping boys for refusing compulsory service with strangers, or running home from it, were to be set in the stocks for two days, and be fed only on bread and water.

The power entrusted to parish-officers over children from the

age of *five* years was an infringement upon the rights of liberty and of nature. Stigmatic punishments have been shewn by experience to be as impolitic as they are barbarous. The absolute prohibition of almsgiving continued to be part of our laws in the reign of Charles II., when we find Sir Matthew Hale writing of it, and of begging, “We have very severe laws in England against begging, the very giver being subject to a penalty: but they take little effect, and, indeed, it is no reason they should. What man that is of ability can have the conscience to deny an alms, or to bring a wanderer to the punishments inflicted by the statutes, when he cannot choose but know, that there is not that *due course provided, or, at least, used,* that persons necessitous, and able to work, may have it?” The *education* of the Poor was not heeded, perhaps was discouraged in the Act; but centuries had to elapse before the labouring population of the country, in this very important particular, were raised to their present condition. The *Beggar's oath* had a precedent in an oath imposed on servants for obeying the laws of wages; they are both monuments of legislatorial folly and impiety.

In the first Act against vagabonds there was no course at all indicated for relieving the impotent and setting the able to work out of any public fund. Henry has the merit of first pointing out this desideratum, and in his own Act he affected to remedy the defect, but only by illusory means. The parish poor-box, which, in Hogarth's day, had its lock sometimes covered with a spider's web, held the only fund for relieving the impotent and setting the able poor to labour, and giving coats to their children, when appointed to masters. Neither impotent nor valorous were to be “suffered to beg;” but the penalties, by a fear of which this social improvement was to be enforced, were to be exacted only so far as the parish poor-box was filled with *voluntary, unconstrained*, and of *free-will* alms, and were to cease, if it was empty. Failing the contents of this wonder-working box, either through lack of charity, or from lukewarmth among the

clergy, at the biddings of beads and on other suitable occasions, or, from the thief, who followed close on the heels of the almoner¹, the King, in person, held forth to his pauper subjects, women as well as men, the stripping, the cart's tail, the bloody perambulation through the town, the lash, the pillory, the knife, the scaffold.

When inquiring into the practical operation of any Act of Parliament it is important to notice to what persons the execution of it is confided. In the instance of the Vagrant Laws of Henry VIII. the ministering officers are "Mayors, Aldermen, Justices, Bailiffs, Governors, or *other* officers." Contemporary writers, in prose and verse, have censured or ridiculed the inferior Magistracy, in past times, for their want of integrity and their partiality: it must, at least, be feared, that, in matters of labour and pauperism, involving questions between employers and employed, givers and takers, rich and poor, the very large and discretionary powers of the Act might have been subjected to much abuse, when the landowners and master tradesmen of the reign of Henry VIII. were sitting in judgment upon cases involving their own interests, or of those of individuals of their own vocations or classes².

¹ Stealing from poor-boxes was cognizable in the Ecclesiastical Courts: see Hale's *Precedents*. In the *Archæologia* (Vol. xx.) are pictures and descriptions of a variety of parish poor-boxes contrived to prevent thefts: they were a standing joke with several of our ancient dramatists.—It has been stated that, under Henry's Statute, if a labourer *declared* that he could not find work, parish officers were *compellable* to find it for him. It may appear that this depended on the numbers of the impotent and valorous, and on the ebb and flow of voluntary alms in the poor-box.

² "Unless you offer sacrifice to idol-justices, they know you not. A justice of the peace, for half-a-dozen of chickens, will dispense with a whole dozen of penal statutes." D'Ewes' *Journ.* p. 661. In the same speech it is stated that "If a warrant come from the Lords of the Council to levy a hundred men, he will levy two hundred; and what with chopping in and choosing out, he will gain a hundred by the bargain"—a passage which illustrates Falstaff's practice in a similar case. In several of Henry's statutes, as, in particular, his statute of *wages*, justices are authorized to proceed by *examination*, of which Dalton writes, in his *Eirenarcha*, "It was devised on account of the obstinacy of evil-doers, that would show no conscience in confessing their faults, and the corruption of jurors, who would present nothing that lay only in their own knowledges."

Sir Thomas More gives the following description of the condition of labourers in the reign of Henry VIII., which tends to shew the difficulty of their finding work, and the injustice of cutting off their ears or hanging them for vagrancy:

“Emigrant miseri, viri, mulieres, mariti, uxores, orbi, viduae, parentes cum parvis liberis; emigrant e notis atque assuetis laribus, nec inveniunt quo se recipient. Quid restat, quam uti furentur et pendeant, aut vagentur atque mendicent, quamquam tum quoque, velut errores, conjiciuntur in carcerem, quod otiosi obambulent, *quorum opera nemo est qui conducat, quum illi cupidissimè offerant.* Nam rusticae rei, cui assueverunt, nihil est quod agatur, ubi nihil seritur.”—A description in accordance with the preamble of the statute concerning sheep, set forth in the last chapter of this work, in which it was recited that a “marvellous multitude of agricultural labourers had been driven to the alternative of starving or stealing:” we shall read, in the next chapter, of the Legislature countenancing a complaint that “English handicraftsmen were constrained to live in idleness, and many of them fell to theft and murder” owing to the competition of aliens.

The law affecting the wages of labourers and workmen in the reign of Henry VIII. must have kept the most willing and able to work on the verge of destitution. In the preamble of a statute passed in the 6th year of the reign, its grounds are stated to have been, that, notwithstanding past statutes, “great and many defaults daily increase, rest, and continue among labourers and artificers, so that daily, by *their* subtle imagination, in fraud of the said statutes, many of the King’s subjects be hurt, deceived, let, and damaged in their building and husbandry.” After which, agreeably to the uniform spirit of previous statutes upon the same subject from Edward III. downwards, *maximum* rates of wages are specified. In counties where *less* wages had been customary, the usual wages (determinable, it would appear, by Justices) were to be the maximum. Separate rates were

fixed for yearly hirings, and for hirings by the day ; in the latter of which cases the labourer might be turned off whenever the master had no need of him¹. The *maximum* rate of wages was that which it was penal for the giver or taker to *exceed*, and for which the labourer or workman might, under penalties, (reaching to twenty shillings, without regard to his *contenement* or *wainage*,) be compelled to be hired. A master only might take advantage of fluctuations in the labour-market, and purchase his human commodity for the hardest bargain he could drive ; a servant must have chaffered to get as near the maximum as he could, when the supply exceeded the demand, feeling, probably, as Apollo, in the opera of *Midas*,

I strike hands, I take your offer,
Further on I may fare worse.
Zooks, I can no longer suffer
Hungry guts, and empty purse.

When the demand exceeded the supply, the labourer must, upon tender, by any master, of the statutory wages, have yielded the involuntary obedience of a slave.

Thus, uniform rates of wages were imposed on labourers to prevent them from exacting too much wages, without reference to the comparative ages, strength, activity, or skill of the employed, and notwithstanding the demand for labour, and the prices of provisions, in the absence of ready communications, varied materially even in adjacent counties. In the reign of Henry VIII. dearths of corn and murrains of cattle were frequent, and would not have been equitably reconcileable with fixed wages. The

¹ A harvest rate is prescribed by the Act, though a recent historian thinks that the labourer might have worked, during harvest, by the *piece*. He considers that every labourer must, by law, have been hired by the *year*, for which period the maximum *daily* rate was claimable ; that labourers could demand the *maximum* rate, and were not merely limited by it ; and that the maximum was the same in all counties ; in short, that the Act was made by a Parliament of servants. A statute of Elizabeth is brought by the historian, at the bottom of his page, in aid of his remarks on a statute of Henry ; whereas it is not only called out of place, but does not pertinently respond to the call.

sudden and numerous debasements of the coinage must have affected the value of wages, and would have directed attention to Henry as a principal enemy of the labouring population.

The very interesting household book of Sir Thomas Le Strange's family, reaching from the year 1519 to 1578 (*Archæol.* Vol. xxv.) shews that commodities, at this period, bore about one-tenth of their present prices, except as to manufactured goods cheapened by machinery and extraordinary fluctuations in the prices of wheat. But potatoes, and most esculent roots, were then unknown in England. The forest-laws were severe against stealers of fuel; servants and labourers receiving twenty shillings a year were included in subsidies; they were compellable to keep themselves and their male children, above the age of seven years, in bows and arrows. Prices of all commodities, owing to the discovery of the new world, and other causes, were rising, and, in consequence, it became the policy of the Parliaments of Henry VIII., that were composed of employers, to keep down wages from rising with prices, a policy very inadequately counterbalanced by laws of equal injustice and selfishness, but more impracticable of execution, for keeping down prices. The labourers shewed their own opinion of the Act of Wages by an insurrection for opposing it, in the next year¹.

The prohibition of using and keeping houses for unlawful games, in the Vagrancy Acts of the Reformation Parliament, included several games of skill and manly exercise, such as *tennis*, *closhe* (skittles?), quoits, and *bowls*. In various statutes of this reign innocent amusements were restricted. This, however, was not from any puritanical disgust, but by reason of their clashing with other pursuits to which the Legislature wished to confine the whole thoughts of the lower orders, and especially

¹ This insurrection is famous for furnishing the first instance in our books, of constructive treason. The founder of this pernicious doctrine was Chief Justice Fineux. It is not mentioned by his biographers that, in a Resumption-Act of Henry VIII., there is a *saving* to that chief justice, of an annuity from the king, of two tuns of wine.

the service of themselves. Thus, by one Act, a master was authorised to license his servant to play, even at cards, with himself or his friends. The King's household accounts contain an item of "soleing six pair of shoes with felt to play in at *tennis*;" and, although mummers had been prohibited, and it was unlawful to sell vizards, we find, among the effects inventoried at the King's decease, ninety-nine vizards.

These prohibitions of *unlawful* games, to the extent to which they were carried, indicate a want of sympathy in legislators towards the lower orders; were they justified by expediency? The contemporary chronicler, Hall, writes, that "when the young men were forbidden *bows* and such other games, some fell to drinking, others to ferreting of conies, stealing of deer, and other unthriftiness." In a Statute of the 8th and 9th of Victoria, it is recited, "whereas the laws heretofore made in restraint of unlawful games have been found of no avail to prevent the mischiefs that may happen therefrom, and also apply to sundry games of skill from which the like mischiefs cannot arise:" the Statute then exempts from the category of unlawful games, among others, *bowling*, and *tennis*, two games interdicted in Henry's poor-law.

The exception of Friars Mendicant in Henry's Act passed in the very Session of Parliament in which the lesser Abbies were dissolved, may appear inexplicable, except so far as this numerous body had little to forfeit, but had much influence with the middle and lower classes. Such a Friar was one of Chaucer's Pilgrims, and, by the Poet's account, appears to have exercised a mischievous kind of beggary; his eyes, all the time, "twinkling like stars in a frosty night." The following is a brief extract from the list of his popular arts for gathering alms:

Full sweetly heard he confession,
And pleasant was his absolution;
He was an easy man to give penance,
Then as he wist to have a good pittance.

For unto a poor Order for to give,
Is sign that a man is well yshrive:

* * * * *

He was the best beggar in all his house,
And gave a certain farm for the grant,
None of his brethren came in his haunt.

In order to judge of the practical operation of the statutes of vagrancy and wages, it is necessary to advert to the subject of *Villenage*¹. From the book on the Commonwealth of England written by Sir Thomas Smith, Secretary of State to Edward VI. and to Elizabeth, we learn, that manumissions of villeins were not common upon lands belonging to Monasteries, until their dissolution; that is to say, upon a fourth or fifth of the lands of the kingdom. Fitzherbert, in the reign of Henry VIII., in a reading on a Statute of Edward I., entitled, *extenta manerii*, after mentioning that many, of "their noble dispositions have made to divers bondmen their manumissions," adds, "howbeit, in some places, bondmen continue yet." There are several extant deeds of manumission of the date of Henry VIII.; one by the King himself of "Henry Knight, a tailor, and John Herle, a husbandmen, our *natives*, as being born within the manor of Stoke Clymmysland, in our county of Cornwall, together with all their issue born, and to be born, and all their goods, lands, and chattels acquired or to be acquired." Queen Elizabeth issued a commission, preserved in Rymer, for manumitting such of her villeins as chose to pay a composition.

¹ A recent historian states, that "Villenage, in the reign of Henry VIII., had for some time ceased. The name of it last appears on the statute-book in the early years of the reign of Richard II." The statement that the name of villein last appears in a statute of Richard II. is not, at least substantially, correct. By an Act in the last Parliament of Henry VII., 19 Hen. VII. c. 15, there is a provision that if any "bondman" purchased any land, to his use, it shall be lawful for the lord of any such "bondman" to enter, during the use, into the lands so purchased by his "bondman" in like manner as if the "bondman" had alone been seized. By a statute 1 Edw. VI. c. 3, an idle servant is to become the *slave* of his master, and the expression is frequently repeated in that statute.

Several cases of villenage in the reign of Henry VIII. occur in the contemporary reports of Chief Justice Dyer. Thus, a case was moved in Easter Term, 33rd of Hen. VIII., where a man had a manor to which a villein was *regardant*, and had made a feoffment of one acre of the manor, by these words, "I have given one acre (describing it), and further I have given and granted J. S. my villein." The Judges were divided upon the point whether the villein passed in *gross*, or as *regardant* to that acre? It was ruled by all the Judges, but with a *quære* of Dyer, in another case, that if tenant in tail of a manor enfeoff one of his villeins regardant of one acre of the manor, and die; although the manor descend to the issue in tail, yet cannot he seize his villein till the acre be recovered. The Chief Justice reports a remarkable case decided in the reign of Elizabeth, which presupposes villenage throughout the reign of Henry VIII., viz. A villein had absconded from a manor to which he was *regardant*, in the first year of Henry VII.; after the lapse of a hundred years the fugitive's son was heard of as being in possession of a farm which he had purchased: this was seized by the Lord of the Manor. The principal argument urged on behalf of the villein's son was that he and his father being *regardant*, were *real* property, and so discharged by the Act for the limitation of claims upon *land*. The case was ultimately decided for the villein; but, as Dyer intimates, less by law than, as he says, *in favorem libertatis*.

Villenage, as far as it extended, proves the degradation of a class of labourers in England; it must also have diminished demand in the labour-market, to the prejudice of free labourers; though, indeed, the condition of labourers and artificers, who were not, technically speaking, villeins, may appear, from the preceding statements, to have been widely removed from that of freemen.

On the whole view of the subject of the present chapter, it may be concluded, that labourers in the reign of Henry VIII.

were the victims of a one-sided policy with regard to wages; that their support, when unable to find work, or when they had become impotent, was precarious; that their treatment for misconduct was unmerciful, for conduct for which they were not morally responsible, unjust and inhuman; and that, in every point of view, physically and morally, they enjoyed nothing to excite the envy, but sustained much to move the compassion of the same class under Queen Victoria.

CHAPTER VII.

TRADE.

TRADE is the subject of about fifty statutes passed by the Reformation Parliament. In reviewing ancient laws relative to trade great allowance is to be made for the early condition of the country internally, and in its foreign relations. In many instances, the trade-laws of the reign of Henry VIII. were grounded on mistaken principles of political economy, and on notions of the omnipotence of Parliament over the transactions of mankind, that have only in recent times been exploded. Not unfrequently there may be reason for suspecting that restrictions and regulations of trade had their origin in the private interests of selfish law-makers. National Industry, whether it was wisely or unwisely directed by the Parliament, may appear, from the statutes of the period, to have afforded, in this stage of its infancy, prognostications of its felicitous maturity. *In cunis jam Jove dignus erat.* The statutes on this subject relate, principally, to (1) Foreign Trade, (2) Home Trade, (3) Markets.

(1) *Foreign Trade.*

Of the statutes of this Parliament relating to *Foreign Trade* the spirit may, in some measure, have been collected from the preamble of a statute, mentioned in a preceding chapter, respecting the cultivation of hemp for the benefit of English linendrapers. The exploded policy was adopted of seeking an excess of exports over imports, and thereby securing a balance of trade. In prosecution of this policy, the importation of foreign manufactured wares, and the exportation of domestic articles of which

every stage of manufacture was not complete, were discouraged or prohibited. An illiberal and impolitic treatment of aliens characterizes this and every other Parliament of Henry VIII., in contravention of the famous provision of Magna Charta in their behalf, and neglect of their obvious utility for the instruction and emulation of our own manufacturers. Multitudinous forfeitures inevitably led to smuggling; and they engendered a pestiferous swarm of informers; operating, moreover, to use Sir M. Hale's expression, as "engines to gain money by licenses," whereby the King, when not sharing the booty of his jackals, filled his coffers by undermining his laws.

Foreign pewter vessels were complained of by the Craft of English Pewterers; as to utensils of which material, it may be noticed that they appear, from household books, to have been in much use among persons in the highest stations, during the reign of Henry VIII. By a statute passed in the twenty-fifth year of the reign, all wares of tin or *pewter made out of the realm*, were prohibited to be bought. The Master and Wardens of the craft of Pewterers were authorized to *search* for foreign tin and pewter wares; which were to be seized, and half the *forfeited pewter* reserved for the King. In the preamble of this statute it is complained "in most lamentable wise, and piteously" that divers of the King's subjects who had been apprenticed in England, "for their singular lucre had repaired to strange regions, teaching strangers all things belonging to the art of pewterers; that, in consequence, a great quantity of pewter vessels was brought from abroad, and the value thereof carried out of this realm by merchants into strange regions. Moreover, the King's subjects were deceived by pewter vessels untruly mixed abroad, whereby the craft of pewterers was in danger of being undone, and a great multitude of the King's subjects were likely to fall into idleness."

Foreign hats, bonnets, caps and night-caps were, after an ineffectual attempt to restrain their use, subjected to prices,

differing from those prescribed for English manufactures of the same kind. By an earlier Act, only Lords and Knights were allowed to buy foreign hats and caps ; in that Act it was recited, that there were upwards of three-score thousand persons engaged in the hat-manufacture of England, who were *undone* by foreign hats, to the great “profit, occupying, increase and relief of strangers.”

Foreign Authors, transmitting to England their works printed and bound, were not allowed a sale for them. In an Act passed in the twenty-fifth year of the reign, it is recited, that there were a great number of “printers and bookbinders in England as cunning and expert as strangers in any other realm;” it was thereupon enacted that none should buy to sell again any printed books ready bound, or buy any manner of printed books from aliens by retail. In order to diminish abuses incidental to the monopoly created by the law, redress for enhancing prices by English printers and booksellers was left to the discretions of the Lord Chancellor, Lord Treasurer and the two Chief Justices. Lord Coke concludes his Second Institute with a commentary on this statute, which he thus commences, “To the end that not only this second part of the Institutes, but all other books of what argument soever, may be sold at reasonable prices, and that the subjects of this realm being printers and binders of books may be set on work.”

Among examples of the prohibition from exporting domestic commodities that admitted of any further stage of manufacture, it was enacted by this Parliament, that no person should “convey or transport unto any of the parts beyond sea, any manner of *cloths* of worsted, before the same cloths were *shorn*, dyed, colored and calendered.” In like manner, by an Act passed in the next year, it was made penal to convey over the sea any “*salt, or untanned hides.*”

The Company of the Stylyard, composed of German merchants, was, by an Act of this Parliament, exempted from

statutes "in any way prejudicial to them." By means of their privileges, which were, probably, not gratuitously conceded, this Company was enabled to monopolise a considerable part of the foreign trade of the kingdom. The Styward Company fell in the reign of Edward VI., in consequence, principally, of its reducing the prices of English corn and wool.

The laws made by the Reformation Parliament respecting the importation of *French Wines* require particular notice. By a statute passed in the 23d year of the reign, three statutes of previous reigns are confirmed, which first established a *navigation law*, in the French wine-trade, for the employment of English ships and mariners. The Act, further, prohibited the importation of French wines between the periods of Michaelmas and Candlemas. There is a case reported, in Dyer, concerning a license with a *non obstante* of the navigation law: but the working of the system of licenses may be best illustrated from the following private letter, in Ellis's *Collection*, of Sir William Godolphin to Lord Cromwell on the subject of licenses of dispensation from this very statute.

"My duty with due reverence in my most humble wise done, pleaseth it your Mastership to understand that I have made four pieces of tin for your Mastership, to make you some *pewter* vessels for your household, containing, in weight, a thousand pounds and above. The mark of the said four pieces is a bow with a broad arrow in it on the one side, on the other side a horse-shoe. I shall send them up to you with the first tin that cometh to London out of our country, and a letter with whom I do send them. Heartily desiring your Mastership, as I am always bold to put you to pain, to move the King his good Grace that if it would please his Grace, of his goodness, to give me a *license* for certain Gascony wines to be delivered *between Michaelmas and Candlemas*, for now is the time to make provision for it. His Grace shall take advantage by the *custom* thereof, and, also, I shall be in readi-

ness to do his Grace service, if his Grace go over to Calais, in an hour's warning, with six or seven tried *wrestlers*, if I have any commandment thereto; beseeching your mastership be not displeased with me for my rudeness to be so bold to write over to you, and to put your Mastership in remembrance of your gentle offer to me at my last being in London, for a license for me and for my friends. Beseeching our Lord Jesus long to continue you in health with honor and long life, written at Godolphin the twelfth day of July by your assured beadman.

WILLIAM GODOLPHIN."

*To the right worshipful Master Thomas
Cromwell, one of the King his most
honorable Council.*

Lurking in the corner of an Act ostensibly upon the subject of French wines, is a provision, adverted to in a former page, as an instance of delegated legislation. In an Act of the twenty-sixth year of the reign, after reciting that an Act of the 23d of the King, upon the subject of French wines, and "sundry like Acts" might be contrary to treaties, it is provided, that the King "during his life natural should have full power and authority, by his Proclamation, from time to time, to repel and make void as well the enactments prohibiting the importation of French wines, as all other such Acts, in part or in whole, which have been made since the beginning of this present Parliament for the restraint or lett of any commodities of this realm to be conveyed to outer realms, or for the restraint or lett of any commodities of outward realms to be conveyed into this realm. And by like Proclamations from time to time shall have power and authority to revive and make effectual the said statutes and Acts again in their force strength and effect in all or such part thereof as to his Majesty shall be thought most convenient, and profitable for his realm¹."

¹ The famous statute of Proclamations will be particularly considered at a later period of the history. But it may here be noticed, as a subject of inquiry, whether

Trade policy is sometimes combined with other objects in statements of the grounds of several prohibitory enactments. Thus the exportation of certain mixed metals was prohibited for reasons assigned, that they had been carried abroad, whereby the King lacked metal for his *ordnance*; and also injury was done to *artificers*.

There is no mention of licenses in this Act, but that they were granted, we learn from the following remarkable case reported by Dyer. "The King had granted to one a license to export bell-metal out of the kingdom, *non obstantibus the statutes then made, and thereafter to be made*. And after the license, another statute (33 Hen. VIII.) was passed, whereby it was enacted that no one should export bell-metal, under a penalty. Whether the license was, by this Act, revoked? was a question *asked* of the Judges of the Bench. And it seemed to Baldwin and Shelley that it was; though the King may dispense with things in future of which he hath the inheritance, as if he grant to one to be discharged of all taxes, and subsidies *to be granted*, that is good."

The exportation of *leather*, one of the three staple commodities of the kingdom, was subjected to stringent regulations with a view of preventing the evasion of the King's customs; leather could not be exported from any port, without being numbered and packed by sworn tellers and packers.

The jealousy of *Foreigners* which may be collected from

writers on constitutional law have correctly represented the *limitation* in that statute, as that Proclamations shall not prejudice estates, offices, liberties, goods or lives, or repeal laws or customs! Whether they have given due force to the exception which immediately follows the limitation, viz. "*Except such forfeitures, pains, and penalties as in this Act, and by every Proclamation which hereafter shall be set forth by the authority of the same, shall be declared and expressed; and except such persons as shall offend any Proclamation concerning any kind of heresy against the Christian religion!*"! Whether the meaning of the whole clause be not, that a Proclamation of heresy was sufficient for burning a man, without allusion to his stake: but that, on any other subject, a Proclamation, to have a penal effect, must express the particular punishment for its infraction! Whether the first part of the clause be not a blind to screen its conclusion!

several of the above statutes, is conspicuous in an Act passed by this Parliament, wherein it was recited that there had been "no small number of grants of denization, and that they every day increase more and more, by the which the said aliens, to their lucre and avail, had increased to great and portable substance and riches, and the natural subjects of our lord the King greatly impoverished; and, after they be so enriched, for the most part, convey themselves with their goods to their own countries wherein they were naturally born, to the great detriment of the commonwealth of this realm of England."

It was, thereupon, enacted that all aliens born who had been made denizens should pay customs, tolls, and duties as before their denization, "any grants to them made, or any act or acts, statute or ordinance made or had notwithstanding." The alien customs, and alien rates in subsidies were onerous, and, it is probable, that letters patent of denization had been purchased of the crown, in a great measure with a view of escaping such exactions.

The jealousy of Aliens may be further collected from an Act of the 21st year of the reign, confirming an arbitrary decree of the Star Chamber made during the long intermission of Parliaments. In this decree every *stranger* was prohibited from keeping in his house more than two strangers born, or, unless he were a denizen, keeping any house or shop; an oath was required to be taken by aliens. The decree contained a recital of the complaints of the London artificers, stating, that, "when aliens have gathered much riches and money, they, *against our laws*, convey the same money over the sea, and then they also themselves go over the sea, and purchase there lands and tenements, and with the residue of their gains they live thereby, and sometime they convert part thereof to the use of our enemies; and, that the great multitude of strangers *consumed* the corn and victual grown and bred within this realm." It was further represented that the poor English handicraftsmen were

constrained to live in idleness, and many of them "fell to theft and murder, and consequently in *great numbers were put to death* by our laws, as we are informed."

The suggestion that it was *against law* for an alien to spend his profits by trade elsewhere than in England, may have had reference to a law of Henry IV. of which Sir Matthew Hale writes, "this Act is still in force." It was enacted thereby that all merchants and strangers who sold merchandizes in England should lay out the money thence arising in other merchandizes of England, and should carry the same, without carrying any gold or silver in coin, plate, or brass out of the realm, upon pain of forfeiting the same. It would appear to have been under the colour of this Act, that Erasmus, in this very reign of Henry VIII. had his purse taken from him by the custom-house officers of Dover, of which loss he wrote, "Quæ cum erat exigua, sed mihi maxima, quum nihil superesset." The apprentices, who were hanged, drawn, and quartered for *levying war* on Ill-May-Day, had, in fact, made a riot against foreigners; a mode of vexing them agreeable to the spirit, but not conformable to the letter of the laws.

(2) *Home Trade.*

The *Home Trade* was the subject of numerous statutes passed in the Reformation Parliament, and throughout the reign of Henry VIII. The principles of these statutes were chiefly those of preventing deceits in the sale of commodities; providing for competent skill in their manufacture; the discouragement of new inventions introduced by aliens; and obviating the evasion of the King's inland duties, particularly his aulnage on cloths.

The means adopted for accomplishing these objects were chiefly those of monopolies granted to particular towns, or to trading guilds; the apprentice system; sales in markets; official *searches*; the aulnager's seal¹.

¹ The London apprentices are well known in domestic and legal history. They are described by foreigners who visited London in ancient times. The apprentice

However salutary such interference by the State may, in some instances, have proved in an early stage of society, it must always have been attended with discouragement to freedom of trade and of labour; the check of inventions and improvements; inconvenience arising from a multiplicity of observances; the accumulation of forfeitures, with their concomitant evils of a swarm of informers, of licenses, and dispensations. Instances will be found, in the ensuing pages, of the mischiefs that may arise out of a system which could only be worked by entrusting arbitrary power, and facilities for oppression, in the hands of a large number of subordinate agents, as to whom it might have been said, with the poet, *Quis custodiat ipsos custodes?*

An arbitrary Act for a monopoly of trade was passed in the twenty-fifth year of the reign: it was recited therein, that Worcestershire cloths were usually manufactured in Worcester, Kidderminster and certain specified towns; and it was, therefore, enacted that cloths should be made at no other places in the county of Worcester than in those towns. It was further provided that owners of houses within those privileged towns should not *raise their rents* to any clothier beyond what they had been for the last twenty years. By another Act of this Parliament, in a like spirit, all hemp grown within five miles of the town of Bridport, then celebrated for the manufacture of cables, was ordered to be sold within that town; it was recited, in the Act, that "evil-disposed persons, for their private lucre and advantage, and intending the destruction of the town, had withdrawn themselves into the country, where they made cables, by means whereof the town was likely to be *utterly dissoluted*." By another Act of this Parliament no person was allowed to prejudice the clothing trade by purchasing wool before the

system held its ground till the reign of William IV. In ancient pictures of processions through the City of London, the streets are usually represented as being lined by the City Companies in their liveries. These companies purchased the chantry-lands from Edward VI.

Assumption after shearing the same, "but such as will make cloth or yarn thereof?"

In an Act perpetuated by the Reformation Parliament the *dry-calendering* of worsteds had been prohibited; it was recited that *strangers* had brought the use of dry-calendering into the realm, whereby a coarse piece of worsted, not past the value of 26*s.* 8*d.* was made, by gums and oils, to show like one of 40*s.* or better; whereas if it took wet, it would not endure. A penalty of 100*s.* was imposed for every piece of worsted dry-calendered, for the satisfaction of the old English *wet-calenderers*. In like manner dyers were, by an Act of this Parliament, prohibited from using brazil wood or any other thing but grain in the dying of scarlet. It was recited in the Act, that "as well *Aliens* as others using the craft of dyers had exercised a false, slighty and deceivable way of dying with brasil and such other like *subtilties* just invented by *aliens* born out of this realm, to the hurt and *slander* of woollen cloths dyed within the realm, which are the most substantial woollen cloths of all realms christened." Searches were to be made in dye-houses by the wardens of the craft of dyers. By the same statute woollen hats and caps were to be made "according to the old workmanship before in use."

In order to prevent frauds in the trade of brewing beer and ale, *Brewers*, by a statute passed in the 23rd year of the reign, were prohibited from exercising the craft of coopers, and from making barrels, kilderkins and firkins for putting their beer and ale to sale. The preamble of the Act, in its promiscuous aspersions, implies a general habit of deceit by tradesmen: it runs, "where the ale-brewers and beer-brewers of this realm have used, and daily do use, for their own singular lucre, profit and gain, to make, in their own houses, their barrels, kilderkins, and firkins,

¹ By an Act of the 14th and 15th of the reign, no person was allowed to sell broad white woollen cloth to any alien unless it could not find an English purchaser after being exposed for sale for eight days at Blackwell Hall; and then it must have been sold to the alien at not longer than a month's credit.

of much less quantity, content, rate, and assize than they ought to be." *Butchers*, by a statute of the 22nd year of the reign, were prohibited from keeping *tan-houses*, because they made *deceivable* leather; and because they bought stolen beasts, and converted their hides into tanned leather, in order to prevent their being identified. *Leather-sellers* were to be prevented from selling *deceivable* leather, by being compelled to sell it in markets; and, in London and three miles round, at Leadenhall market; it was to be *searched* by the wardens of the craft of Curriers. *Wool-merchants* were not to wind any wool unwashed, or to make it more weighty by winding with it "clay, lead, stones, sand, *tailes*, *cottes*, *combre*, lammas wool, or any other thing." *Clothiers* were to make their cloths of specified lengths and breadths; their manufactures were to have two seals, one of the maker, and another, for the better security of the aulnage duty, that of the aulnager.

The deceits of *Searchers*, who were appointed to detect the deceits of tradesmen, are illustrated by an Act passed in the twenty-fourth year of the reign, wherein it was recited, that "the King's poor subjects be greatly hindered and decayed; and few of them can go or ride either in shoes or boots, nor have any good or strong harness of leather, nor any enduring saddles; and that, where it is commonly used that a print, seal, or mark should be set and put by the *Searchers*¹ of tanned leather upon every hide well and sufficiently tanned, before the selling thereof, to the intent that the goodness thereof by the same should be known to the buyers thereof; which *mark or print, for corruption or lucre, is commonly set and put by such as take upon them the search and sealing, as well upon leather insufficiently tanned, as upon leather well tanned, to the great deceit of the buyers thereof.*"

¹ In a statute of Henry VII., intituled, "What stuff upholsterers shall put in bolsters, featherbeds, and pillows," it is stated that they were stuffed with materials, which, by the heat of man's body, became *abominable*, all because the *searches* of the fellowship of Upholsterers could not be prosecuted except within the city.

A penalty was, therefore, imposed on *Searchers* improperly affixing their seals and marks.

Several statutes of this Parliament relate to extortions, by reason of Wardens and Fellowships making ordinances for exacting for the first entry into their common halls of apprentices, and upon the expiration of terms of apprenticeship, unreasonable fees; statutory fees are prescribed as less liable to perversion.

Corporations and Companies were, probably, not always responsible for their officers; it would appear from the following letter, in Ellis's *Collections*, addressed to the Mayor and Aldermen of London by Henry VIII., that the dismissal of a meter of canvas occasioned a peremptory mandate for his restoration. "Our trusty and well beloved servant William Blakendale, Chief Clerk of *our spicery*, who was in possession of the office of *metership of linen cloth and canvas* within our city of London and suburbs of the same of late, without cause or desert, both contrary to the gift to him made, and also against justice and equity, you have evicted. We, therefore marvelling not a little at your ingratitude *to us* and to our servant in that case exhibited, by these our letters require you, and nevertheless command you, that you not alone put *our said servant* in full possession of the said office immediately upon the sight hereof; but *also* restore him to all profits he should have received by reason of the said office, failing not thereof as you tender our pleasure."

(3) *Markets.*

Henry VIII. and his Parliaments may be resembled to the Philosopher in Rasselas, who imagined that he could distribute rain and sunshine over the earth in proportions that were beneficial, at every season, for every place. In like manner labour, victuals, prices, independently of demand and supply, were imagined to be amenable to parliamentary control. The legislature, indeed, sometimes encountered insuperable impediments to their measures arising out of the discovery of the New World, or other

intractable phenomena ; but it did not confess its impotency, or admit that people could be safely left to the management of their own capitals. It laid the blame of failure on those traditional offenders, the Forestallers, and on deceitful tradesmen ; loaded them with obloquy, and harassed them with penalties.

The regulations made by the Reformation Parliament for the government of *Markets* had for their principal objects restraints on the exportation of victuals, limited prices, compulsory supply, rules of sale, and the punishment of the offences of engrossing, forestalling, and regrading. With regard to the policy of these laws, the lowering of prices may have been, in some measure, suggested by the selfishness of the law-makers, who were not butchers, poulterers, nor wine-merchants, and several of whom kept multitudinous households to be fed, the feeding of whom was assigned as a ground of legislation in various ancient game laws. Another object of the Parliament may appear to have been, that, inadequate wages of labourers might be compensated by cheapness of victuals ; and so, with injustice to two classes of persons, members of the legislature employing labourers for less than they could live upon, made other people supply the deficiency, to the benefit of their own pockets¹.

By a statute of this Parliament, it was prohibited to carry out of the realm any corn, cattle, butcher's meat, poultry, cheese, or butter, without a license under the King's great seal. Thus, it was calculated that provisions would not be sent to foreign markets, unless at the King's discretion, and to his profit. England was virtually declared in a state of famine.

When victuals were sold, it was judged expedient not to leave prices to be determined by buyers and sellers : the prices of beef, pork, mutton, and veal were governed by one statute of the Reformation Parliament ; of cheese, butter, capons, hens,

¹ It is upon an assumption that victuals might be procured, at all seasons, and under all casualties, at the prices of the statutes, and on a comparison between such paper prices and miscalculated rates in the Statute of Wages, that a theory has been built of England being, under Henry VIII., an elysium for labourers.

and chickens by another ; of foreign wines, beer, and ale by another, the prices of books and book-binding by another. Such prices were sometimes stereotyped in a statute, sometimes made determinable by Justices of the Peace, and not unfrequently by the *Lord Chancellor* and other principal officers of State. The penalties for taking more than the government prices were sometimes fixed by statute : in other cases, they were to be published in a Royal Proclamation “ *upon pains to be expressed in such Proclamation.* ”

The manner of preparing victuals for sale was not below the attention of the legislature. Some laws on this subject indicate that labour was underpaid ; they also shew the futility of such meddling. In an Act passed in the 24th year of the reign, it was recited, that butcher’s meat was “ sold at so excessive price that *the King’s needy subjects cannot gain with their labour and salary sufficient to pay for their convenient victual and sustenance.* ” It was, therefore, provided that meat should be cut into *reasonable* pieces, and sold by avoirdupois weight. The prices of meat, in this Act, were subjected to a peculiar provision ; certain prices were specified, which the Lord Chancellor, at his discretion, had power to diminish, “ but in no wise to enhance the same.” The Butchers, however, it is recited in an Act passed in the next Session of Parliament, “ wilfully and obstinately ” would not sell their meat conformably to the Act of the preceding year. It was, therefore, enacted that Mayors and other officers might themselves sell the meat of offenders by weight, and at the statutory prices ; penalties were left to be imposed, at discretion, in Royal Proclamations. The Parliament, notwithstanding, ultimately succumbed to the Butchers. By an Act passed in the twenty-seventh year of the reign, it was recited that his Highness “ considering the dearth of all manner of victual by reason of floods and unseasonable weathers, and that if former statutes were put into execution the Butchers would not be able to live, nor his Commons be well served, by

his *accustomed goodness* is *contented*, that, during four years, all butchers and others selling flesh by retail may lawfully sell beef, pork, mutton, and veal, at their *pleasures* and *liberties*." This repeal was afterwards made perpetual.

Compulsory Sales at compulsory prices were, in some instances, authorized. It was provided, by an Act passed in the 25th year of the reign, that "every owner, grazier, breeder, farmer, and broker of this realm who had any fat cattle kept to be sold for man's meat," and who *refused to sell* the same to butchers, at prices to be assessed by Justices of the Peace, were to be bound over to appear in the *Star Chamber*, there "to make fine, and abide such further punishment as shall be *thought convenient*."

In like manner, by an Act passed in the twenty-third year of the reign, it was provided that, "Because divers merchants, having in their hands and possessions great abundance of wines by them brought to be sold, obstinately and maliciously have *refused to sell* to many of the King's subjects any of their wines remaining and being in their hands; purposing and intending thereby, for their own singular and unreasonable lucres and profits, to have larger and higher prices of their wines, to be set according to their unsatiable appetites and minds," it was enacted, that any merchant having wines to be sold and refusing to sell, or not selling for ready money at the prices set, should lose the value of the wine required to be bought; and that Justices of the Peace and other officers might *enter houses* and cellars where wines requested to be bought lay, taking the proceeds in satisfaction of forfeitures.

In order to compel people to manage their own cattle in a way that should conduce to the cheapness of markets, *Calves* were not allowed to be killed before they were of the age of two years: this was provided by several statutes of the Reformation Parliament: the reason is given, that, "calves might not be put to slaughter before they were of convenient years,

and mete for beef, whereby might have grown the greater plenty of beefes, and at meaner prices."

Laws were passed in this Parliament against engrossing, forestalling and regrating, offences which have been withdrawn from our criminal code only in the present reign. Their impolicy in the existing state of society has been demonstrated by eminent writers; but, in the reign of Henry VIII. when the communication between places was very imperfect, such restriction on the enjoyment of property and freedom of trade may have admitted of some justification. The rise of prices, however, which these laws were designed to counteract arose principally from the circumstance that the supply of commodities did not increase so rapidly as that of the precious metals, which was quadrupled in the first century after the discovery of the American mines. In one statute of this Parliament, the *regrating* of poultry, cheese and butter, arising from the "greedy covetousness and appetites of their owners," is assigned as a ground for limiting the prices of these articles; in another, the *regrating* of wool is stated as a reason for prohibiting aliens from purchasing it. The most elaborate statute against these market offences is one with regard to the sale of fish at Stirbrigge Fair, from which it is mentioned that London was chiefly supplied with its fish. It is stated that owing to the practice of regrating by persons for their own lucre and singular avail, to the "displeasure of Almighty God and of his Highness," fish was sometimes sold at the Fair at second, third, or fourth hand. Besides pecuniary penalties, seizures were directed, and the King was to be entitled to half the engrossed, forestalled, or regrated fish¹.

¹ In Gunning's *Reminiscences of the University of Cambridge* will be found a Proclamation signed by the Vice-Chancellor of the University and the Mayor of the Town, and dated July 20, 1795, against regrating in the Cambridge Market. It is accompanied by a *notice* to the poor inhabitants of the town, from the Vice-Chancellor and Mayor: "Suffer us to entreat you to return to your respective homes, and, be assured, we will take every legal measure to reduce the price o'

The supervisors of markets, it may be presumed, often yielded to temptations arising from the multitude of fiscal and penal regulations which it was their duty to enforce. It was of an official of this description that Lord Coke thus expressed himself to a Grand Jury at Norwich: "The Clerk of the Market will come down, and call before him all weights and measures: if there is a fault, he and the informer share the penalty, but never redress the abuse. It was once my hap to take a Clerk of the Market in these tricks; but I advanced him higher than his father's son, by so much as from the ground to the top of the pillory. If you of the Jury, therefore, will present these offences, by God's grace they shall not go unpunished; for we have a coif, which signifies a skull, whereby, in the execution of justice, we are defended against all oppositions."

meat, by preventing butchers from buying and selling in the same market, and all forestalling, engrossing, and regrating." In a statute of Edward II. the forestaller is called *Pauperum oppressor, et totius communilitatis, et patricie publicus inimicus.*

CHAPTER VIII.

PROPERTY.

THE statutes concerning *Property* that were passed by the Reformation Parliament had chiefly reference to land, which, in consequence of the decay of the feudal system, was becoming an article of commerce. The law of real property throughout the reign of Henry VIII. was much disfigured by feudal obligations and privileges, and by rules to preclude their interruption. Nevertheless, the new wants of the community occasioned the enactment of various provisions, whereby the alienability, enjoyment, and liabilities of real property were augmented beyond limits compatible with the ancient institutions of the country. It will be found that the enactments on this subject were, in some cases, converted to the public benefit rather than designed for it; and are defensible upon grounds of modern rather than ancient policy. The laws of the Reformation Parliament relative to property concern (1) *Uses*, (2) *Recoveries*, (3) *Terms for Years*, (4) *Recognizances* in the nature of a Statute Staple, (5) *Conveyances to Superstitious Uses*.

(1) *Uses*.

The key-stone, in the present day, of a large part of the fabric of conveyancing, is the Statute of *Uses*, passed in the last Session of the Reformation Parliament. Without attempting its complete elucidation in this place, it may be convenient to advert to the antecedent history of the law of real property in this country, so far as to state that to the transfer-

ence of land, at the common law, notoriety was an essential requisite. Visible and pantomimic forms of transfer were consonant to the notions of an uncivilized people, and accorded with feudal institutions. As society advanced, its wants could not be adequately supplied except by interests in land which could *spring* or *shift in futuro*, without the neighbourhood being spectators of the *springing* or *shifting*. This social *desideratum* was supplied by means of the Chancellors, upon principles derived from the civil law, and by the agency of trusts; a system which involved a double ownership of land; a legal owner, or *trustee*, bound by his engagements, and, therefore, by the Chancellor, to hold for the benefit of an equitable owner, or *cestui que trust*.

The purposes of trusts were multiform, as for the payment of creditors, provisions for wives or younger children, fulfilment of wills; but there was one species of trust which became more prevalent than the rest, and was called a Use. The Use was a passive trust; it required a legal ownership in some person simply for the purpose of doing what another person, the *cestui que use*, bid.

A Use was frequently resorted to for what were deemed, at the time, fraudulent purposes, but which, for the most part, were those of escaping from the oppression of feudal exactions, and the severity of regal confiscations; it is supposed to have been first contrived by the Monks, for the purpose of evading the statutes of Mortmain. (A double ownership, and want of notoriety, were objections to the practice of Uses, as they are still to modern trusts, but they may be thought to have been counterbalanced by numerous advantages.) Of these advantages the principal were, a right to dispose of real property by will, and a variety of modifications of estates and interests in land, whereby they might *spring* or *shift* in a manner eminently conducive to use and enjoyment, but repugnant to the principles of the Common Law.

Henry VIII. seems to have been moved to the passing of the Statute of Uses, principally from an anxiety about the failure of his feudal dues. We learn from Hall, that the King, in the twenty-fourth year of his reign, at an interview with the Speaker and Commons, adverting to a Bill for the better surety of his wardships, for which he was willing to give, in barter, a testamentary power over half of a testator's lands, spoke as follows, “I have *sent* you a Bill concerning wardships and primer seisin, in which things I am greatly wronged. In this I have offered you reason, as I think, and as *the Lords do too*, for they have passed the Bill, and set their hands to it. Therefore, I do assure you, that if you will not take a reasonable thing when it is offered, I will search out the extremity of the law; and then I will not offer so much again.” The nation had long enjoyed the right of making wills of *all* their lands, through the medium of uses; the King, for the better collecting of his feudal perquisites, wished Parliament to give up this right in a moiety; and, because he encountered an unusual reluctance to pass *his* bill which he had sent, (he attempted, by the Statute of Uses, to abolish wills entirely.)

By the Statute of Uses it is recited that, “where by the common laws of this realm, lands, tenements and hereditaments be not devisable by testament, nor ought to be transferred from one to another but by solemn livery and seisin, matter of record, writing sufficient made *bond fide*, without covin or fraud; yet nevertheless divers and sundry imaginations, subtle inventions, and practices have been used, whereby the hereditaments of this realm have been conveyed from one to another by fraudulent feoffments, fines, recoveries, and other assurances craftily made to *secret uses*, intents, and *trusts*; and also by *wills* and testaments, sometimes made by nude parols and words, sometimes by signs and tokens, and sometimes by writing, and, for the *most part*, made by such persons as be visited by sickness, in their extreme agonies and pains, or at such time as they have scantily had any

good memory or remembrance, at which times they, being provoked by greedy and covetous persons lying in wait about them, do many times dispose indiscretely and unadvisedly their lands and hereditaments.

"By reason whereof, and by occasion of such fraudulent feoffments, fines, recoveries, and other like assurances to *uses*, *confidences*, and *trusts*, divers and many *heirs* have been unjustly at sundry times *disinherited*; the *lords* have lost their wards, marriages, reliefs, heriots, escheats, aids *pur fair fitz chevalier* and *pur fille marier*; and scantily any person can be *certainly assured* of any lands by them *purchased*; nor know surely against whom they shall use their *actions*, or *executions* for their rights, titles, and duties; also men married have lost their *tenancies* by the *curtesy*; women their *dowers*; manifest *perjuries* by trial of such secret wills and uses have been committed; the King's Highness hath lost the profits and advantages of the lands of persons *attainted*, and of lands craftily put in feoffments to the uses of *aliens* born; and also the profits of *waste for a year and a day* of lands of felons attainted; and the *lords* their *escheats* thereof; and *many other* inconveniences have happened, and daily do increase among the King's subjects to their great trouble and inquietness, and to the utter subversion of the ancient common laws of this realm."

It was therefore enacted for the "extirping and extinguishment" of such errors and abuses, and that the subjects of the realm should not be "deceived, damaged, or hurt by reason of such *trusts*, *uses*, or *confidences*, that where any person stood or was seised, or any time thereafter should happen to be seised of any lands, tenements or hereditaments to the *use*, *confidence*, or *trust* of any other person," every such person that has or thereafter should have any such "*use*, *confidence* or *trust* should, from thenceforth" stand and be seised, deemed and adjudged in lawful seisin, estate and possession of and in the same lands, tenements and hereditaments, to all intents, constructions and

purposes in the law of and in such like estates as they have or shall have in *use, trust or confidence*. And that the estate, title, right, and possession that was in any person to the *use, trust, or confidence* of another, be clearly deemed and adjudged to be in him that hath or hereafter shall have such *use, confidence, or trust*, after such quality, manner, form and condition, as they had before in or to the *use, confidence, or trust*."

The *Preamble* of this Act, it will be perceived, is divided into *causes and effects*. With regard to the *causes*, it may be observed, that by the Statute of Wills, passed in the 32nd year of the King, a few years afterwards, all the maledictions on wills in this Preamble were withdrawn, and they were pronounced to be eminently beneficial to the public. The secret creation of trusts and the making of wills by words, signs, or tokens, were capable of being remedied to a considerable extent, as they were afterwards remedied by the Statute of Frauds in the reign of Charles II. The complaint that wills were, for the "*most part*" made by persons who had not a disposing mind may be questionable; that persons in extreme agonies did not always dispose amiss we collect from Sir Thomas Smith, who tells us that at such moments were made, for the most part, the manumissions of villains. Most of the objections stated in this portion of the preamble would have been applicable to wills of personality, which are not touched by the Act, probably on account of their not affecting the King's profits.

With regard to the latter division of the Preamble, that concerning the *effects* of the above vituperated causes; it had been recited in a statute, passed in the first Session of the Reformation Parliament, for facilitating the sale of lands for the payment of debts pursuant to a will, that "*divers persons made wills for the payment of their debts, necessary and convenient finding of their wives, virtuous bringing up and advancement of their children to marriage, as also for other charitable deeds to be done by executors for the health of their souls.*" It would have

been easy to have attached *dower* and *curtesy* to equitable estates, as in the present day. It was, moreover, usual, with the express view of meeting the difficulty that there could be no dower in a use, to set apart a particular estate, on the eve of a marriage, to the husband and wife jointly; whence the expression of "a widow's *jointure-land*," on which Butler stations his Cupid. Much may be said in favour of a power of *disinheriting heirs*, especially in the time of Henry VIII., when lands could not ascend by inheritance to a father or mother, and could not pass to the half-blood; a very remote heir must have been preferred, or the King, who had thus an interest adverse to wills. The King also looked to wardships from heirs rather than devisees.

The lands of *attainted* traitors "in *use* or in possession were given to the King by the Treason-Acts of this reign." *Uses to aliens* were a chimæra: a use to an alien would have been as one supposed by a Judge in the Year Books, viz. a use to *Salisbury Plain*. *Perjury*, doubtless, was increased by the power of making wills and verbal trusts, but would have been considerably diminished, if the Statute of Frauds had been anticipated; this objection of perjury applied tenfold to the Acts of Henry imposing compulsory oaths.

It may be observed that if the King and lords lost sight of *cestui que use* or *cestui que trust*, they had, at least, the legal owner before them, whose lands yielded all the fruits of tenure, and were liable to confiscation divested of all uses; lands forfeited being taken in the *post* and not in the *per*. This was, in some degree, an alleviation of the injury complained of; but it is easy to conjecture various ways, by which, through the marshalling of trustees, feudal obligations might have been eluded. With regard to the difficulty of finding the right person against whom to bring an *action or execution*, it is conceived that this evil, if it were not exaggerated, must have arisen chiefly from the operation of the Statutes of *Pernors*: uses, in themselves, were matters of privity between the owner at law and owner in equity; the

Statutes of Pernors gave the owner in equity some of the powers of an owner at law.

With regard to the *enactments* of the Statute of Uses, it has been observed by the Real Property Commissioners, that the statute "attempted to do more than could be accomplished, in drawing no distinction between active, passive, and constructive trusts; and stopped short in what was practicable, by not directly authorizing the modifications of property and of transfer which had been effectuated through the medium of Uses, and which the wants of mankind required."

The Judges saved the Statute from signal failure and ridicule, by drawing a distinction, which the legislature had not drawn, between passive and other trusts. In order to effect which purpose, they gave a new meaning to the expressions *trust* and *confidence*. Further, by a marvellous interpretation, that the statute only contemplated a *first* use, they enabled every one, at his pleasure, by the insertion of a few words in a conveyance creative of a *second* use, to hand back even passive trusts to the jurisdiction of the Chancellor.

A lasting benefit to the country was plucked from a side of the statute: uses were, by a subtle construction, held to *imbue* the estates into which they were metamorphosed; and, hence, by the employment of the jargon of uses, estates might be made to *spring* and *shift*, without the agency of a court of equity, though with all the privacy which it was the professed object of the Statute of Uses to abolish.

Conveyances under the Statute of Uses are founded on the basis that a conveyance to A to the use of B is, in fact, a conveyance to B, A being a mere *conduit-pipe*; and that a conveyance to the use of A to the use of B (a *second* use) gives A a legal, B an equitable estate. Well might the Real Property Commissioners report that "a system of *infinite subtlety*, though answering most important purposes, has been framed upon the Statute of Uses, whilst most of the evils it was meant to remedy remain."

The Legislature of New York have essayed to abolish Uses, *passive* trusts, and all but a small number of select *active* trusts, in the last of which experiments they have not the concurrence of Chancellor Kent.

Not only did the Statute of Uses entirely fail of abolishing secret conveyances, but it multiplied them. Nothing was easier than to *bargain* and *sell* land for a nominal consideration, upon which a use would arise in favour of the *bargainee*, which the statute would convert into an estate, without any livery of seisin, or sight of the lands conveyed. It was attempted to obviate this consequence by another Act passed in the same Session, whereby conveyances by *Bargain* and *Sale* were required to be enrolled, as if an enrolment in the Court of Chancery was a proceeding of equivalent notoriety to livery of seisin. But, here, again, the Legislature was baffled by the ingenuity of lawyers, conveyances being afresh wrapped in impenetrable secrecy by means of the device of a *Lease* and *Release*.

The Statute of Uses was one of *six* grievances complained of in the famous insurrection called the Pilgrimage of Grace. Mr Sheriff Dymock is related to have said, in a speech at Horn-castle, "Masters, there is a statute made, whereby all persons be restrained from making their wills upon their lands; and no person, to the payment of his debts, neither to the advancement of his daughters' marriages, can do nothing with their lands, nor give to his youngest son any lands." It is said in a letter of the Earl of Oxford to Cromwell, "Divers things should be reformed, and, especially, the Act of Uses. Younger brothers would none of that in no wise¹." Lord Herbert states that one of the depositions in the proceedings against the Duke of Norfolk, the last iniquity of Henry's reign, was to the effect that "one witness informed the Council that a John Freeman told

¹ Froude's *History*, Vol. III. p. 91, from the Rolls MS. We learn from the same source, that Lord Darcy complained of the difficulty peers experienced in obtaining copies of Bills in progress through their House.

him that the Duke should *say*, at the time of the commotion in the North, in the presence of a hundred persons, that the *Act of Uses* was the worst Act that ever was made."

In this, the most important of Henry's Acts concerning real property, he seems to have been actuated chiefly, if not entirely, by his appetency for the fruits of feudal tenure. He did not "call to his blessed remembrance" the impolicy and hardship of such exactions; but, in order to appropriate them with greater security, he studied to cast back his people in the progress of civilization by divesting property of several of its principal attractions, in abolishing all kinds of trusts, and the power of making a will of lands. He was willing to sacrifice the interests of creditors, widows, daughters, younger sons, throughout the land, in order that he might revel in the plunder of his tenants in *capite*, their heirs and heiresses.

The ignorance and folly which dictated the Statute of *Uses* equalled its impolicy and injustice. Lord St Leonards, in his Preface to *Gilbert*, observes that "in comparing what the Statute of *Uses* was intended to perform, with what it actually has performed, one can hardly doubt that any other legislative measure which opposed the confirmed habits of the People in disposing of their property, would have led to the same results. This should operate as a lesson to the Legislature, not vainly to oppose the current of general opinion; for, although diverted for a time, it will ultimately regain its old channel, in spite of accumulated Acts of Parliament."

(2) *Common Recovery.*

A *common Recovery*, as distinguished from a *real Recovery*, meant a conveyance of lands by means of a fictitious suit brought by the person to whom the lands were to be conveyed. In order that this masquerade might be the more closely imitative of a real process, the plaintiff was feigned to have *recovered* what he acquired for the first time in his life. Such Common

Recoveries, when feudal principles had lost some of their strictness, were feigned to be matters of no less notoriety than a livery of seisin, the eyes of the whole of England being construed, in law, to be riveted on whatsoever transpired in the Superior Courts of Justice.

Fictitious Recoveries might have been termed *common*, from their popularity. They were expedient, where it was an object not to draw attention to the circumstances of any particular conveyance; in which case a notional publicity would have been more eligible than the gaze and babbling of a vicinage. Further, a Common Recovery had been made an engine for docking estates tail, in direct contravention of a statute, by means of fictions upon fictions known by the name of *vouchers*. A Common Recovery was, generally, convenient, in substituting a walk to Westminster for a journey to the site of lands to be delivered and seised. It is only within our own times that the substantial advantages of a Recovery have been attainable, without its preposterous fictions.

In an early statute of Henry VIII. Common Recoveries had been rendered more eligible for the purpose of conveyancing, by the removal of a feudal difficulty, which was, that unless a tenant *attorned*, that is to say, gave his consent, to a change of landlords, he was not bound to perform the stipulations of his lease in favour of a new landlord; not, therefore, in favour of a recoveror. It had been enacted by that statute that a fictitious or other recoveror might *distrain* for rent or services, without an attornment. The Reformation Parliament, in its first session, provided, further, that he might bring against the tenant of the land actions of debt and of waste; an enactment which materially contributed to the general use of Common Recoveries, and, thereby, encouraged *secret* conveyancing, which, in the Statute of Uses, is represented to be fraught with mischiefs.

Henry VIII. was a notable Recoveror. He perceived that the forfeiture which was part of the sentence in the *Præmunire*

against Wolsey would not attach to the Cardinal's London Palace, which had been conferred on the See of York in the middle of the thirteenth century, and which was called, in consequence, *York Place*¹. As the King's cupidity would not have been satiated without this enviable prize, his Judges proposed to surmount the legal difficulty by inducing the Cardinal to suffer a common, or fictitious, recovery of this gem of his See. There is extant, accordingly, in the public records, a deed of transfer, bearing date the 12th of February, 21st Hen. VIII. indorsed in these terms: "York Place, Middlesex. A recovery by Cardinal Wolsey." From Rymer (Vol. xiv.) we learn that Sir Thomas More, the Duke of Norfolk, and Sir William Fitzwilliam recovered York Place, to the use of the King; that they afterwards transferred the Palace and grounds to the King, pursuant to such use, and appeared in chancery to acknowledge the transfer. The name of York Place, which might have preserved the memory of a plundered See, was speedily changed, agreeably to what is stated in Shakspere's play of *Henry VIII.*:

1st Gentleman.

— Sir, you

Must no more call it *York Place*, that is past;

For since the Cardinal fell, that title's lost.

'Tis now the King's, and called *Whitehall*.

3rd Gentleman.

— I know it,

But 'tis so lately altered, that the old name

Is fresh about me.

Lord Campbell, in his *Life of Wolsey*, writes of this transaction: "A difficulty arose respecting the title to York House, which the King had taken possession of, and which belonged

¹ Sir Matthew Hale states that, by the Common Law, a sole corporation, as a Bishop, forfeited the profits of his bishopric during his incumbency, yet that his successor was not bound by such forfeiture, because the inheritance was in right of their Church; but that by a statute (passed a few years after the transaction in the text), sole corporations forfeited the inheritance, and their successors were bound. He adds, "For it is apparent that Henry VIII. had not only in prospect the dissolution of monasteries, but had a resolution to curb the Clergy, who were too obsequious to the Pope, and his power."

to the Archiepiscopal See of York. To sanction this palpable spoliation, by the discreditable advice of all the Judges and the new Chancellor, the form was gone through of a fictitious recovery in the Court of Common Pleas, and Wolsey was required to execute a recognizance that the right was in the King. Judge Shelley was sent to Esher, to obtain this from him, but found him very reluctant, on the ground that the property was not his, and he was robbing his successors of it."

The details of this iniquitous transaction are thus related by Cavendish:

"After which, Mr Shelley, the judge, was sent to speak with my lord, who, understanding he was come, issued out of his privy-chamber, and came to him to know his business; who, after due salutation, did declare unto him, That the king's pleasure was, to demand my lord's house, called York Place, near Westminster, belonging to the bishoprick of York; and that you do pass the same according to the laws of this realm: his highness hath sent for all his judges and learned council, to know their opinions for your assurance thereof, who be fully resolved, that your Grace must make a recognisance, and, before a judge, acknowledge and confess the right thereof to belong to the king and his successors, and so his Highness shall be assured thereof. Wherefore, it hath pleased the king to send me hither to take of you the recognisance, having in your Grace such affiance, that you will not refuse to do so; therefore I do desire to know your grace's pleasure therein.

"Master Shelley, quoth my lord, I know the king of his own nature is of a royal spirit, not requiring more, than reason shall lead him to by the law; and therefore I counsel you, and all other judges and learned men of his council, to put no more into his head than law that may stand with conscience; and then you tell him, that, although this be law, yet it is not conscience; for law, without conscience, is not fit to be ministered by a king, nor his council, nor by any of his ministers; for every council

to a king ought to have respect to conscience before the rigour of the law: *Laus est facere quod decet, non quod licet.* The king ought, for his royal dignity and prerogative, to mitigate the rigour of the law; and therefore, in his princely place, he hath constituted a chancellor to order for him the same; and therefore the court of chancery hath been commonly called the court of *conscience*, for that it hath jurisdiction to command the law, in every case, to desist from the rigour of the execution. And now I say to you, Master Shelly, Have I power, or may I with conscience give that away, which is now mine, for me and my successors? If this be law and conscience, I pray you, shew me your opinion.

“Forsooth, quoth he, there is *no great conscience* in it; but, having regard to the king’s great power, it may the better stand with conscience, who is sufficient to recompense the church of York with the double value.

“That I know well, quoth my lord; but there is no such condition, but only a bare and simple departure of other rights: if every bishop should do so, then might every prelate give away the patrimony of the church, and so, in process of time, leave nothing for their successors to maintain their dignities; which would be but little to the king’s honour.

“Well, quoth my lord, let me see your commission; which was shewed to him; then, quoth my lord,—Tell his Highness, that I am his most faithful subject, and obedient beadsman, whose command I will in no wise disobey, but will in all things fulfil his pleasure, as you the fathers of the law say I may. Therefore I charge your consciences to discharge me; and shew his Highness, from me, that I must desire his Majesty to remember, there is both *heaven and hell*.”

(3) *Terms for Years.*

Excluded from the assembly of freeholders in Courts Baron, a *Termor for Years* had, for centuries, but a very precarious

interest in land: his tenure was fortified by the Reformation Parliament. It was a rule of feudal law that a recovery in an action for the seisin of real property could be falsified only by a freeholder. Hence it was perceived that, by suffering a collusive recovery brought against the freeholder himself, perhaps by his own proposed trustee, he could oust his own tenant for years; and thus this estate, now become so important, was, for a long time, liable to be legally juggled away. This subject had attracted the attention of the Legislature so early as in the reign of Edward I. in the Statute of Gloucester; but, under that statute, the termor for years could not be relieved, unless he knew that the recovery was being suffered, and was received to defend the right of his term; it was also a current opinion that the statute of Edward applied only to tenancies created by *deed*.

The statute of the Reformation Parliament on this subject, which was passed in the Chancellorship of Sir Thomas More, contained a recital to the effect, that the same persons who had made leases, and taken fines upon them, suffered fictitious recoveries, whereby their tenants were ousted from their terms, and they themselves entered on the very lands they had let. It was further recited that doubts had arisen, whether termors had power to falsify such covinous recoveries. It was therefore enacted "that all such termors may falsify, for their terms only, such recoveries, as well heretofore had, as hereafter to be had, in such wise and form as a tenant of a freehold shall or may do by the course of the common law, where such tenant of freehold was neither privy nor party to the same recovery."

There had been many precedents of leases for years, and some for long terms (mentioned in Broke's *Abridgment*, and Madox's *Formulare Anglicanum*), but this statute of Henry VIII. must be regarded as marking an epoch in the civilization of the country, dating from which the enjoyment of real property was enhanced by the stability afforded to one of its most important, and now one of its most familiar modifications.

(4) *Statutes Staple.*

The liability of real property for claims of justice upon its owner had not been fully recognized, in this country, until our own times; but a step in the proper direction on this subject was made by the Reformation Parliament, in the Chancellorship of Sir Thomas More. This was effected by the institution of a *Recognition in the nature of a Statute Staple*. According to a statute of Edward III. a security might have been taken before any Mayor of the Staple, at the towns appointed for the transaction of foreign commerce, the principal advantage of which was that the *lands* of the debtor were delivered to the creditor until the debt was satisfied, the creditor, in the meantime, being said to hold as "Tenant by Statute Staple." But this security could only have been taken between merchants, and must have related to goods sold at the Staples. It appears that, in order to have the advantage of this security, the character of merchants had been sometimes fictitiously assumed, and fictitious wares had been pretended to be bought and sold at the Staples. By the statute of Henry, the benefit of Statutes Staple was extended to all the King's subjects, without feigning any mercantile business. The Recognition in the nature of a Statute Staple has become obsolete, but that this species of security on land was once familiar to the *general* may be collected from the grave-scene of *Hamlet*¹.

(5) *Superstitious Uses.*

Two rare instances in which the alienation of property is restrained by the law of England occur in conveyances to Cor-

¹ In this scene, statutes and recognizances occur in connexion with recoveries, fines, *double* vouchers, and a *pair* of indentures: Shakspere writes of indentures *tripartite*, jointures, *cutting* an entail, and many terms which may indicate that if, as some, in indulgence to their pleasant veins, have argued, he had been a lawyer's clerk, it is probable that he had charge of the conveyancing department of his employer's office.

porations, called *mortmain*, and conveyances, whether to corporations or individuals, which militate with public policy. In modern times such restrictions have been much assailed, and have been defended upon different grounds to those openly urged in the reign of Henry VIII. The law of Mortmain, before that reign, had been founded, and was then maintained on the ostensible principle, that a Corporation yielded no feudal fruits either upon death or marriage, but held its lands as if in a *dead hand* (*morta manu*). By an Act of the Reformation Parliament, passed in its third session, certain conveyances to *unincorporated* individuals were prohibited ostensibly for the same feudal reasons on which stood the prohibition against mortmain. It may be conjectured, however, that the law of mortmain, and that of the 23rd of the King, derived support, and the latter its origin, from an apprehension of ecclesiastical power. In modern times, the circulation of landed property has been a prominent motive for restraining grants to corporations, and for superstitious, or even charitable uses.

By the Act of the Reformation Parliament it is recited, that "Where, by reason of feoffments, fines, recoveries, and other estates and assurances, made of trusts, of manors, lands, tenements, and hereditaments, to the use of parish-churches, chapels, churchwardens, guilds, fraternities, commonalties, companies, or brotherhoods erected and made of *devotion* or by common consent of the people *without any corporation*; and also by reason of feoffments, fines, recoveries, wills, and other acts made to any uses aforesaid, or to the uses and intents to have *obits* perpetual, or a continual service of a priest for ever, or for threescore or fourscore years, founden of the issues and profits of the lands, tenements and hereditaments whereof such feoffments, fines, recoveries, wills and other acts have been made; or that the feoffees, conisees, recoverors, or other persons and their heirs thereof seized, shall take, levy, receive and perceive the issues, revenues, and profits thereof, and the same to dispose, pay, convert, or

otherwise employ to any such uses, intents and purposes, as have been above specified, or to any other *like* uses and intents; there groweth and issueth to the King our Sovereign Lord, and to other Lords and subjects of the realm, the *same like losses* and inconveniences, and is as much prejudicial to them, as doth, and is, in case where lands be aliened in *mortmain*."

It was, therefore, enacted that assurances to be made after the first of March then next to the intents specified in the preamble should be void, except such as should be made for twenty years or a less period. In specifying persons prohibited from making, ordaining, or *devising*, those are mentioned who are seized to their proper *uses*, and those who have feoffees, recoverors, or conisees, to their *uses*. It was enacted that the statute should be "interpreted and expounded, as beneficially as may be, to the destruction and utter avoiding of such uses, interests and purposes therein above remembered, and of all other like uses and intents."

The latitude of construction which might be given to the Act may be collected from a particular exception contained in it for the "ordinances, devises, or declarations of uses to be declared in writing by the executors of two deceased Aldermen of the city of Norwich, of lands, tenements and hereditaments, not amounting in the whole to above the clear yearly value of forty pounds, to be converted to the discharge of tolls and customs within the said city, and at the gates of the same, for the discharge of the poor people within the said city of taxes and tallages, and for cleansing the streets of the said city; so that the same ordinances, devises, and declarations be had, made, and certified in writing into the King's Court of Chancery, within two years next ensuing the feast of Easter next coming." The statute has been held to extend only to *superstitious* uses; but the uses specified in this saving sound *charitably*.

It may be observed that, by this statute, prohibited conveyances could not be made good by means of a license; and that,

on the other hand, the estate conveyed was not seizable; in which respects the law differed from that of mortmain; and, therein, may appear to have been founded less on feudal rights, than a disrelish of the wealth and influence of the clergy. This statute appears to have been the first levelled against *purposes*, the law of mortmain being applied, ostensibly at least, to the legal character of *persons*.

Mr Finlason, in his history of the *Laws of Mortmain*, observes that the statement of the Act is *untrue* that "there groweth to the King and other Lords the like losses and inconveniences as when lands be aliened in mortmain," and he calls the Act a "pretended mortmain act." But it is easy to conceive, that, as in the case of feoffees to uses, trustees, though unincorporated, might, by multiplication and substitutions, occasion very similar results to the King and Lords as those produced by alienations in mortmain.

The finding of Priests for obits is the subject of many antiquarian notices to be found in the *Archæologia*. The Priests who received annuities for this purpose, called *Annivelars*, were so numerous in Exeter Cathedral as to be maintained in a separate College. In the books of Chalk Church, Rochester, is to be found an entry, that William May wills his wife to keep his *obit*¹ with six bushels of wheat made into bread, and, in drink, ten bushels of malt, and a cheese of the price of twenty-one pence, to be given to the poor, and the feoffees to see this done for ever. Among entries in the books of other churches, we find that John Potkin left three acres of land, and eight wether sheep, and an eight-sheep-lease, to Robert Mason and his heirs for keeping his obit for ever; there is mention of a lease of land for the light of the Holy Cross.

Henry VIII., by his own will, with utter neglect of this

¹ The expense of an obit included payments to the annivelar (see Chaucer's *Chanon's Yeoman's Tale*), the parish priest, clerks, chorister children, sexton, bellman, besides tapers, and an oblation.

statute, after providing for the place of his interment at Windsor, and an honourable tomb for himself and his wife Queen Jane, directed that there be “made and set a convenient altar, honourably prepared and apparellled with all manner of things requisite and necessary for daily masses there to be said perpetually while the world shall endure.”

A thousand marks were bequeathed to the poor, to be distributed part on the way to, and part at the place of burial; the recipients were to be “moved to pray heartily to God, for the remission of the King’s offences, and the wealth of his soul.”

Lands and spiritual promotions to the value of six hundred pounds a year, were bequeathed to the Dean and Canons of St George’s, Windsor, for ever, upon condition “to find two priests to say *masses* at the said altar to be said where we have appointed our tomb to be made and stand; and, also, after our decease, to keep yearly four solemn *obits* for us, within the said College of Windsor; and at every of the same obits to cause a solemn sermon to be made. And, also, at several of the same obits to give to poor people, in alms, ten pounds.”

CHAPTER IX.

CIVIL PROCEDURE.

THE verdicts of Jurors in civil causes gave rise to legislation by the Reformation Parliament. The laws on this subject present a striking contrast between the general morality of the nation and the confidence reposed in the public administrators of justice in ancient and in modern times. Another matter was regulated by this Parliament, viz. that of costs, which continues, in the present day, to be a very important head of Civil Procedure. In dealing with the subject of costs, this Parliament had to make provision for suitors *in formâ pauperis*, from whom an equivalent to costs was attempted to be elicited. Poor Suitors had first obtained a *locus standi* in courts of justice, by a law of Henry VII., whether from his known policy of depressing the higher and elevating the lower classes of the community, or from humane sentiments entitling him to the appellation he received, of the *Poor Man's King*.

(1) *Civil Verdicts.*

In an Act passed in the twenty-third year of the reign, it is recited that "The King, our Sovereign Lord, of his most goodly and gracious disposition, *calling to his remembrance* how that perjury in this land is, from manifold causes, by unreasonable means detestably used, to the disinheritance and great damage of many and great numbers of his subjects well disposed, and to the most high displeasure of Almighty God; the good statutes

against officers having *return* of writs, making *panels* partially for rewards to them given, against unlawful *maintainers* and *embracers*, and against *jurors* untruly giving their verdicts, notwithstanding; for reformation whereof, and, forasmuch as the late noble Henry VII. provided remedy for the same by a statute made in the eleventh year of his reign, which statute is now expired."

It was, therefore, enacted, that, in the proceeding by attaint for a false verdict¹, a pecuniary penalty of twenty pounds should be paid by the Jury giving an untrue verdict, if the amount of the sum in dispute had extended to forty pounds, and, if under, a penalty of five pounds. Penalties of twenty shillings, forty shillings, five pounds, were imposed for successive defaults by jurors summoned to try the Attaint; half of the forfeitures were to belong to the King.

This Act evinces the impolicy of excessive punishments; shewing that in order to diminish corrupt verdicts, it had become expedient to mitigate the punishment for returning them. The Common law punishment of attaint was eminently severe and degrading, including infamy, waste of lands, demolition of houses, and forfeiture of goods. In the reign of Henry VII. the legislature altered the *villanous* judgment to a pecuniary fine, as a temporary measure. In the first year of Henry VIII. the Act of Henry VII. was temporarily revived, but it expired in the third year of the reign; so that for twenty years attaints had continued villainous as at Common law, until the King called the subject "to his remembrance." Sir Thomas Smith, in his *Com-*

¹ The opinion of Chief Justice Vaughan and modern practice are against the applicability of attaints to criminal cases; but Sir Matthew Hale lays it down that if a jury, in a criminal case, acquits a prisoner against full evidence, "the king may have an *attaint*; for, although a man convicted upon an indictment can have no attaint, because the guilt is affirmed by two inquests, the grand inquest that presents the offence upon their oaths, and the petit jury that agrees with them; yet, when the petit jury acquits, they stand as a single verdict, for they disaffirm what the Grand Inquest have, upon their oaths, presented." The consequence of such an unequal rule must have been, that it was more perilous for a jury to acquit than to condemn.

monwealth of England, writing of attaints, says, that "Gentlemen would not meet to slander and deface the honest yeomen their neighbours :" the penalties in the Act for defaults of Jurors summoned to try attaints indicates the prevalence of this compunction.

The language of the Preamble shews that, even in civil cases, apart from hopes and fears inspired by the government, the names of twelve jurymen, though expanded like a peacock's tail, could not, in the reign of Henry VIII., entitle them to implicit confidence. Barrington remarks that, in all ancient statutes, it is the perjury of jurors, and not of witnesses, which is animadverted on ; and he notices that in a picture of the Dance of Death, translated by Lydgate in the reign of Henry VII., with some additions to adapt it to English characters, a juryman is introduced, who had often been bribed to give a false verdict both in civil and criminal trials : Death is made thus to address the Juror :

Master Jurour, which that at Assizes,
And at Sheres' quests did embrace,
And who most gave, most stood in thy grace.
The poor man lost both land and place.
For gold thou couldest folk disherite,
But now, let see with thy faint face
To fore the judge how canst thee quite.

The Jurour maketh answer.

Whilom I was cleped in my countrey
The Belwether, and that was not alight :
Not loved, but drad, of high and low degree,
For whom me list, by craft I could indite,
Hangen the true, and the thief respite.
All the country by my word was lad.
But I dare sein shortly for to write,
Of my death many a man is glad !

The Preamble especially adverts to the *partial* making of *panels* for rewards by officers having return of writs. This

complaint is independent of the influence of the Crown, in *criminal* cases, arising from the appointment, and the punishment, in the Star Chamber, of returning officers. Neither was there in *civil*, as in *criminal* cases, any power vested in Judges, as packers extraordinary, whereby they were authorized to *reform* panels by taking out and putting in names at their dispositions. This statute, however, is not a solitary testimony to the packing of juries, in civil cases. Barrington mentions, as a common item of an attorney's bill, a charge *pro amicitia vicecomitis*. In a previous reign, as we learn from the *Paston Letters*, the influence of the Crown was sometimes exerted in the return of panels for civil trials; it was a practice to purchase a King's letter for the Sheriff's favour, the price of which was a *noble*. There are some equivocal entries bearing on this subject in the household book of the L'Estrange family (*Archæol.* Vol. xxv.), contemporary with the statute, such as payment to an under-sheriff "for returning a panel¹."

There is an omission, in the Preamble, of the partiality of *Judges*. In State Trials, indeed, within the period of this Parliament, and throughout the reign of Henry VIII., the subserviency of Judges to the dictates of the Crown, needed no recital; and it was obvious that men who could prostitute their learning, talents, and stations in committing murders, by legal sophistry, to please a King, would not hold the scales of justice even between party and party. Many reigns had to elapse before judicial bribery, in private causes, became extinct. In the next reign, Latimer, in his sermons before the King, adduces instances of gross corruption in his Judges, and a statute was then passed against the purchase of judicial offices, concerning which Lord Coke quotes the epigram on Pope Alexander:

Vendere jure potest, emerat ille prius.

And not long afterwards, as we learn from D'Ewes, Sir Nicholas

¹ In the *Paston Letters* is a letter from an *Under-sheriff*, saying, "I purpose, as I will answer God, to return the true election; nevertheless, I have a *Master*."

Bacon said, in a speech as Lord Keeper, in 1572, “ Is it not, trow you, a monstrous disguising, to have a Justice a maintainer, to have him that should, by his oath and duty, set forth justice and right—against his oath, offer injury and wrong? to have him that is specially chosen, among a number, by a Prince, to appease all brawlings and controversies, to be a sower and maintainer of strife and sedition—by swaying and leading of *juries* according to his will—acquitting some for gain, indicting others for malice, bearing with some as his servants or friends, overthrowing others as his enemies,—procuring the questmonger to be of his livery, or otherwise in his danger, that his winks, frownings, and countenances may direct all inquests? Surely, surely, there be they that be subverters of all good laws and orders, yea, that make daily the laws, which of their nature be good, to become instruments of all injuries and mischiefs.”

By a statute of the 33rd of Henry VIII. which has been repealed in modern times, Judges were prohibited, under a penalty of £100, from holding assizes in any county where they were born, or where they inhabited, on account of “ jealousy of affection and favour towards kinsmen, alliance, and friends.” It was recited that the Judges had infringed ancient statutes made for the same object by their own “ means, industry, and policy.”

Maintenance and Embracery are mentioned, in the Preamble of this statute, as obstructions to public justice; the first being that of giving aid to parties in suits, the second, that of attempting to corrupt jurors. Neither of these offences have been excluded from our Criminal Code, though we hear nothing of them in the present day; jurors, howbeit very frequently swayed by an improper bias, are not now exposed to the tickling hands of *embracers*, or the violent hands of *maintainers*, which are the themes of many ancient statutes. The proceeding by *Attaint* was abolished in the reign of George IV. It had, long before that time, become obsolete, having been founded on the antiquated

principle of the Jury being witnesses, and the exploded doctrine, that *vicini vicinorum præsumuntur scire.*

(2) *Costs. Pauper Suitors.*

The law of *Costs* shews how legislation, on some subjects, has proceeded according to the spurs of particular occasions, and has only, by degrees, been reduced to uniformity. It might appear to be an obvious principle of jurisprudence, that, in the matter of costs, the same measure should be meted both to plaintiffs and defendants; to do this took two centuries.

A statute of Edward I. had awarded costs to plaintiffs, and a statute of Henry III. had given them to defendants in one case only, relating to wardship in chivalry. Credit is due to the Reformation Parliament for an Act passed in the 23rd year of the reign, whereby, in the generality of personal actions, it was provided that the defendant should receive the like costs which the plaintiff could have claimed if he had succeeded.

In an Act of the next Session of Parliament it was recited that many specialties had been taken by members of the King's Council, and others, for debts to the King, for his provisions, and other causes, which, by law, might be sued for in the names of the persons by whom they were taken to the King's use: it was, therefore, enacted that the plaintiffs in actions upon such specialties should not pay costs. The Parliament seems to have judged that plaintiffs intending to do the King a service were to be exempted from general rules, and were not to be visited with costs, although confessedly in the wrong, and however frivolous and vexatious might have been their demands.

In the Act of the 23rd of the King, there is a proviso, "that all and every such poor person or persons being plaintiff or plaintiffs in any of the said actions, bills, or plaints, which, at the commencement of their suits, or actions, be admitted by the discretion of the judge or judges, where such suits or actions shall be pursued or taken, to have their process and counsel of *charity*,

without any money or fee paying for the same, shall not be compelled to pay any costs by virtue and force of this statute, but shall suffer *other punishment* as by the *discretion* of the justices or judge, afore whom such suits shall depend, shall be thought reasonable."

The *other punishment at discretion*, of an unsuccessful plaintiff suing *in formâ pauperis*, was, probably, at this ruthless period, that of *whipping*. Sergt. Salkeld, in his Reports of the reign of William III., has this notice, "A pauper shall not pay costs, unless he be nonsuit; but then he shall pay costs, or be *whipped*, per Holt, C. J. *Quare tamen*, for, afterwards, in another Term, I moved that a pauper might be *whipped* for non-payment of costs; and the motion was denied *per Holt, C. J.*, saying, he had *no officer* for that purpose, and never knew it done."

CHAPTER X.

CRIMES AND PUNISHMENTS.

THE definitions and punishments of offences in the reign of Henry VIII. transcend those of other reigns in the transgression of every rational and humane principle of Criminal Jurisprudence; and yet they fell short, in their enormity, of the interpretations they received from Henry's Judges. The King's own children, Edward VI. and Mary, upon their accessions to the throne, concurred with their Parliaments in Acts passed for the express purpose of purifying the Criminal Law of the country from their father's contaminations¹.

In a previous chapter respecting the Royal Succession, is detailed the catalogue of treasons whereby Henry signalized his marriage with Anne Boleyn, and out of which he selected pretexts for her destruction. In the same chapter, it has been seen that novel species of misprisions of treason were invented,

¹ In a statute of the 1st year of Edward VI. it is recited, "That subjects should rather obey from love of their Prince, than from dread of severe laws; that, as in tempest or winter, one course and garment is convenient, and, in calm or more warm weather, a more liberal case and lighter garments, both may and ought to be followed and used; so it is likewise necessary to alter the laws according to the times." The preamble of the first statute of the reign of Mary is in a more dignified style: "Forasmuch as the state of every king and ruler standeth more assured by the love of the subject towards their Sovereigns, than in the dread and fear of laws made with rigorous pains; and laws also justly made for the preservation of the commonweal without extreme punishment or rigour, are more often obeyed and kept, than laws and statutes made with extreme punishments; and, in especial such laws and statutes so made, whereby not only the ignorant, but learned and expert people, minding honesty, are often trapped and snared; yea, many times, for words only without other fact or deed done or perpetrated."

and that by the extension of forfeitures and limitation of sanctuary, the King enabled his subjects to ask, *Quis nescit longas regibus esse manus?* In the chapter concerning Parliament have been noticed the preposterous *Præmunires* of the clergy and of the laity of the land; and also the law whereby common sense and humanity were outraged, by including poisoning among high treasons, and punishing poisoners with boiling; in the same chapter was noticed a parliamentary sentence for cutting off hands. In the chapter relating to the Poor, we have observed Henry's own punishments of cutting *clean off* gristles of ears, and the gallows, for vagrancy.

The statutes passed by the Reformation Parliament, in regard to Crimes, to be considered in the present chapter, relate to (1) Treasons, (2) Felonies, (3) Gypsies, (4) Poachers, (5) Heretics.

(1) *Treasons.*

A treason Act of a comprehensive nature was passed in the twenty-sixth year of the reign, in the next Session of Parliament after that in which the succession treasons were enacted. In this Act it is recited, that "Forasmuch as it is most necessary, both for common policy and duty of subjects, above all things, to prohibit, provide, restrain and extinct all manner of shameful *slanders*, perils, or imminent danger or dangers which might grow, happen, or rise to their Sovereign Lord the King, the Queen or their heirs, which, when they be heard, seen or understood, cannot but be odible and also abhorred of all those sorts that be true and loving subjects, if in any point they may do or shall touch the King, his Queen, their heirs or successors, upon which dependeth the whole unity, and universal weal of this realm. Without providing wherefore too great a scope of unreasonable liberty would be given to all cankered and traiterous hearts."

It was, therefore, enacted that if any person "do *maliciously wish, will, or desire*, by *words*, or in *writing*, or, by *craft*,

imagine, invent, practise or attempt any bodily harm to be done or committed to the King's most royal person, the Queen's, or their heirs apparent; or to deprive them, or any of them of their *dignity, title, or name of their royal estates*, or slanderously and maliciously publish and pronounce that the King our Sovereign Lord should be heretic, schismatic, tyrant, infidel, or usurper of the crown," or rebelliously retain fortresses, ships, ammunition, or artillery;—every such person and their accessories should be adjudged traitors.

Lord Coke, in his fourth Institute, observes of this Act, in its connection with the Act of Supremacy, to which it was insidiously made a *rider*;—"Also I find that, in times past, the Houses of Parliament have not been clearly dealt withal, but, by cunning artifice of words utterly deceived, and that in cases of greatest moment, even in case of high treason, as taking one example for a warning in like cases hereafter. King Henry VIII. after the Clergy had acknowledged him Supreme Head of the Church, thought it no difficult matter to have the same confirmed by Act of Parliament, but, withal, secretly and earnestly desired that the impugners thereof, though it were but by *word*, might incur the offence of high treason. Finding the one, that is, the acknowledgment of his Supremacy, likely to have good passage, and having little hope of the other concerning high treason, sought to have it passed in some other Act by *words closely couched*, though the former Act of Supremacy had been the proper place. And, therefore, in the Act for the recognition of his Supremacy, it is enacted that he should have annexed and united to the Crown, the 'title and style' thereof. And, afterwards, towards the end of the Session, a Bill was preferred whereby many offences be high treason. So as now, by this latter Act he that by word or writing attempts to deprive the King of the 'title' of his royal estate, is a traitor. And, upon this law of the 26th Hen. VIII., divers suffered death as traitors, for attempting to deprive the King of his title and style of supre-

macy. Whereas all laws, especially those that are penal, and, principally, those that are penal in the highest degree, ought to be so plainly and perspicuously penned, as every member of both Houses may understand the same, and, according to his knowledge and conscience, give his voice."

In Lord Coke's third Institute, and in the later Discourses of Sir Michael Foster, are pointed out the mischiefs likely to have arisen from the substitution of "*words*" in the Act, in the place of the long-established expression of the Statute of Edward, "*Overt fait*." Disloyal words are frequently the result of temper, not of treasonable design; all words are very liable to mistake and misapprehension by an honest witness, to misrepresentation by a government-spy. It may be added, that the injustice of *verbal* treasons was the more glaring at a period when it was the usual practice not to produce the hearers of treasonable words for cross-examination, but to read their depositions, which, we know, from extant documents, were frequently garbled¹.

Closely couched as the expressions of this Statute were, it was a daring flight of construction for the Attorney-General to have affirmed, at Sir Thomas More's trial, "Sir Thomas, though we have not one *word* or *deed* of yours to object against you, yet we have your *silence*, which is an evident sign of the malice of your heart: because no dutiful subject, being lawfully asked this question, will refuse to answer it." Sir Thomas More replied, that it was a maxim with civilians and canonists, *Qui tacet consentire videtur*. The Attorney-General's construction, which is in consonance with an allegation of the indictment, "*malitiosè penitus silebat*," was, in effect, that the term *words*, in a highly penal statute, might mean words not expressive of any criminal thought, but merely evasive of questions, or no words at all.

With regard to the term "*malicious*," its insertion had been

¹ See, in Mr Jardine's *History of the Gunpowder Plot*, specimens of garbled depositions, together with directions as to how much was to be read, and what passages were to be omitted.

insisted on as a *sine qua non* by the Commons¹. It may be thought that, according to any fair construction, the Judges were not warranted in treating the word *malicious* as superfluous, or laying it down for law, as was done, that a declaration against the Supremacy, made by *any manner of means*, and even at the express *command of the King*, would be *malicious*. It will scarcely be controverted that Judges ought to have directed Juries, that answers extorted by prison interrogatories, or wheedled out from prisoners by Crown Officers, through artful conversations and false pretences, still more, that silence under importunate questioning, were not *malicious*. Moreover, expressions used by close prisoners in the Tower of London (a very unusual place for committing treason), howsoever obtained, were entitled, in a highly penal case, to a very benign interpretation.

The Act of 26th Hen. VIII. is notorious in history for the fatal prosecutions, under colour of its provisions, of Sir Thomas More, Bishop Fisher, the Carthusian Monks, and a multitude of other persons of less celebrity. The substance of the charge in all these indictments was the same. But that of Sir Thomas More was much more elaborate than the rest, probably from dread of his legal criticism². Sir Thomas More was accused of certain matters, from which the Jury *conclude* that he “*falsè, proditoriè, et malitiösè arte imaginavit, inventavit, practicavit, et attemptavit præfatum Serenissimum Dominum nostrum Regem de dictis dignitate, titulo, et nomine suis Supremi Capitis in terra Anglicanæ Ecclesiæ penitus deprivare.*” At the commencement, however, of the indictment, it is stated that the prisoner “*imaginans, inventans, practicans, et attemptans, atque volens et desiderans,*” whereas the conclusion, as above seen, contains no “*voluit et desideravit.*” It may be thought that by the construction of

¹ *Archæol.* Vol. xxv. Memoir of Bishop Fisher.

² The original of Sir T. More's indictment is given in the Appendix. An extract from Fisher's among the Cotton MSS. will be found in the 25th Volume of the *Archæologia*. Translations of the indictments against More, Fisher, and the Carthusian Monks, are given by the Record Commissioners.

the Act, the "imagining, inventing, practising, and attempting," could not be proved by words or writings, but only by *overt act*; and yet the whole evidence against More consisted of words and writings. It might not have been thought convenient to *conclude* that More had been guilty of "willing and desiring," but the introduction of these words in the prelude was expedient for letting in evidence of silence, and of words extracted by compulsion and by guile.

The matters alleged in the indictment of Sir Thomas More, from which the conclusion was to be deduced that he had committed treason, were (1) that when examined in the Tower, he *malitiose penitus silebat*, and gave an indirect answer, (2) A letter to Fisher, (3) An examination of Fisher upon interrogatories, (4) Another examination of More, on which occasion, as upon the former one, *penitus silebat*, but gave, although *silent*, an indirect answer, (5) That More and Fisher burnt their letters, (6) A conversation, in the Tower, with Rich the Solicitor-General, in which More was represented to have expressed his sentiments in favour of the power of Parliaments to make Kings, and, upon Rich saying, "You know that our Lord the King is constituted chief head on earth of the Church of England, and why, Master More, can you not affirm to accept the same, just as you would that I should be made King." To which More is stated to have replied, that "the causes were not similar, because the King can be made by Parliament, and deprived by Parliament, to which Act every subject gives his consent; but, in the first case, the subject cannot be obliged, because his consent cannot be given for that in Parliament¹."

The indictment was no sooner read than Lord Chancellor Audley and the Duke of Norfolk pressed Sir Thomas More to confess himself guilty; language which was sufficient to daunt

¹ The indictment alleges the offences to have been committed "contra formam et effectum statutorum prædictorum." It has been noticed that in the indictment against Anne Boleyn there is an absence of reference to any statute.

an ordinary prisoner, for it assumed the legality of the charges, and the incontrovertibility of the unheard proofs. When the Jury had delivered their verdict, Audley demanded the opinion of Chief Justice Fitzjames as to the sufficiency of the indictment, who replied, that "by St Gillian (for such was always his oath), if the Act of Parliament be not unlawful, then the indictment is not, in my conscience, invalid. Whereupon the Chancellor exclaimed, *Quid adhuc desideramus testimonium? reus est mortis*, and immediately passed sentence for high treason." These opinions, to the effect that the indictment, upon the face of it, was consonant to the Statute, may not be assented to by learned readers; Lord Campbell, in reference to that of Fitzjames, denounces him as accessory to what his lordship terms Sir Thomas More's "atrocious murder".¹

With regard to the *evidence* upon the trial of Sir Thomas More, it consisted of official examinations taken in the Tower, of the proof of the burning of letters, and, chiefly, of the testimony of Solicitor-General Rich. Of Rich's conduct on this occasion Lord Campbell writes, "The next contrivance was plotted and executed by one who has brought a greater stain upon the bar of England than any member of that profession; a profession generally distinguished, even in bad times, for integrity and independence, and never before or since so far degraded, as to have its honours won by palpable fraud, chicanery, and perjury." His Lordship observes of Rich's testimony, that it was delivered "to his eternal disgrace, and to the eternal disgrace of the Court which permitted such an outrage on decency."

For the lasting reprobation of Rich's insidious treatment of Sir Thomas More, for an indelible stigma on all concerned in More's prosecution, the extant indictment, in the *Baga de Secretis*, furnishes indisputable *data*. It is, also, related by Roper,

¹ Mr Foss attempts to excuse Fitzjames's opinion, as though it expressed a doubt. Erasmus writes of the verdict, "Qui duodecim viri, quum per horae quartam partem secessissent, reverni sunt, et pronunciarunt *killim* (guilty), hoc est, *dignus est morte.*"

that More said, when upon his trial, " If I were a man, my Lords, that had no regard to my oath, I would have had no occasion to have been here at this time, as is well known to every body, as a criminal; and, if this oath, Mr Rich, which you have taken, be true, then, I pray, I may never see God's face, which were it otherwise, is an imprecation I would not be guilty of, to gain the whole world."

It is observable, that in the relation which we have of Fisher's trial, Rich appears in similar colours to those upon that of More. This relation does not stand upon such good authority as that of Roper, but it was considered by Hargrave as carrying with it great appearance of truth, and as deserving of credit. Fisher is there represented to have stated that " This man (meaning Rich) came to me from the King, as he said, on a secret message, with commendations of his Grace, declaring, at large, what a good opinion his Majesty had of me, and how sorry he was of my trouble, with many more words than are here needful to be recited, because they tended so much to my praise, as I was not only ashamed to hear them, but, also, I knew right well I could in no way deserve them. At last he broke with me of the matter of the King's Supremacy, to the which he said, that although all the Bishops in the realm have consented, except yourself alone, yet, nevertheless, the King, for the better satisfaction of his own conscience, had sent him unto me, in this secret manner, to know my full opinion in the matter, for the great affiance he had in me, more than any other. He added further, that, if I would herein frankly and freely advertise his Majesty my knowledge, how, upon certificate of my misliking, he was very like to retract much of his former doings. When I had heard all this message, and considered a little upon the words, I put him in mind of the new Act of Parliament. To that he told me that the King willed him to assure me, on his honour, and on the word of a King, that, whatever I should say unto him by this his secret messenger, I should abide no danger, no peril, for it; neither

that any advantage should be taken against me for the same, notwithstanding my words were ever so directly against the statute, seeing that it was but a declaration of my mind secretly to him, as to his own person: and, for the messenger himself, he gave me his faithful promise, that he would never utter the words in this matter to any man living but to the King alone." It is, also, related that Rich made no answer to this statement further than that "whatever he had said on the King's behalf, he said no more than his Majesty commanded, and, if I had said to you in such sort as you have declared, I would gladly know, what discharge this is to you, in law, against his Majesty, for so directly speaking against the statute:" whereat, it is stated, the "Judges taking quick hold, one after another, said, that this message or promise from the King neither could, nor did, by rigour of the law, discharge him: but in so declaring his mind and conscience against the Supremacy, yea, though it were at the King's own commandment, or request, he committed treason by the Statute¹."

Sir Matthew Hale, in commenting upon this Act, considers that it was intended to be perpetual, for it contains mention of the King's successors; howbeit, it has been recently contended

¹ A recent eulogist of Henry passes over Fisher's trial *sub silentio*. He writes, that some of the letters between More and Fisher "had been burnt, but others were in the hands of the Government, and would have been sufficient to sustain the prosecution; but they preferred his own words from his own lips." The indictment, on the other hand, states, that "Prefati Thomas More et Johannes Fisher ad eorum supradictum falsum et nefandissimum propositum celandum, omnes, et omnimodas litteras alterutrum scriptas, et deliberatas, et eorum unus et alter, immediatè post lecturas earundarum, combusserit." It is believed, first, that the Government had no other letters in their hands, and that, consequently, the statement that they would have been sufficient to sustain the prosecution is as unfounded in fact as it is unfair in inference. Secondly, it will scarcely be credited that, if the Government had been in possession of conclusive evidence under More's hand, they would have *preferred* parol evidence of words drawn from his lips, or evidence of silence, or the testimony of Rich.

The same writer expresses himself thus mildly of Rich: "The law-officers of the Crown, who were to conduct the prosecutions, were the witnesses under whose evidence they were to be tried. It was a strange proceeding, to be *excused* only, if excused at all, by the *pressure of the times*." Having stated that the chief charge

that Henry's laws were made severe only with a design of meeting temporary emergencies. Hale regards the practising *bodily harm*, provided there be an *overt act*, and detaining castles, after proclamation, were treasons under the statute of Edward, but that the "rest are purely new treasons."

Concerning *forfeiture* for treason, it was enacted by the Act of the 26th of the reign, that offenders should forfeit "estates of *inheritance in use or possession*," with a saving of the rights of other persons their heirs and *successors*. Sir Matthew observes that by virtue of the term *inheritance*, estates tail became forfeitable to the King; and that, by inference from the term *successors*, the lands of abbeys came to the Crown, on the attainder of the Abbots; he adds, "and, possibly, this was in design at the time of making that statute." He does not notice that similar furtive extensions of the law of confiscation are to be found in the Succession Act of the preceding year. Considerable nicety was introduced into the law of confiscation by Henry's new treasons: thus, *private* rights of forfeiture for treasons by the statute of Edward, as, for instance, the franchise of the Bishop

against More was the conversation held with him by Rich in the Tower, he observes that the *story* of Rich swearing that More had said to him, in the Tower, that "the Parliament could not make the king Supreme Head of the Church," furnishes a *fine picture in all our history books*. He states that "the record of the indictment does not contain the expression to which the *infamous* Solicitor-General is reported to have falsely sworn—neither these words, *nor any thing like them*, but only the evasive answer which had been ruled by the lawyers to be all one as to speak against the statute." (*Fraser's Mag.* Sept. 1858.) Further, as this writer termed Burnet's account of the evidence on Anne Boleyn's trial a *legend* upon a ground which, it has been seen, fails him, so here he writes, "the fine *fable* of the perjury upon the trial *melts* before the indictment, into *legend*." It is to be observed, that the *story* in history books follows the conversation as stated in the indictment, and not the expressions which are here substituted; nevertheless, it is conceived, that the passage in the indictment relating to the conversation with Rich bears a *resemblance*, and that a strong one, to a charge of denying the power of Parliament to make the king Supreme Head of the Church. It may be concluded, that the *chief* charge against More, on the face of the Record in the *Baga de Secretis*, shews an opportunity for Rich's perjury as *depicted* in the alleged *story*, *fable*, and *legend*; and that the assertion of More being charged *only* with an evasive answer is inapplicable except to More's answer to the Commissioners, and *melts* before the *chief* charge of the indictment, into hallucination.

of Durham, were saved; but such franchises were not saved in the case of any of the new treasons; nor could persons having *jura regalia* claim forfeitures of estates tail, or of lands held in the right of churches or monasteries. Henry reserved for himself the exclusive benefit of forfeited lands and goods arising from his own newly invented treason-laws.

Forging the King's "Sign Manual or Privy Signet" was made high treason by an Act passed in the twenty-seventh year of the reign, wherein it is recited that "*small* punishment had been provided for this offence." It is made, by the Act, one of the highest class of crimes, to be visited by the severest punishments known to the law.

This statute was an extension of the treason-law of Edward III. according to which, it was treason "to counterfeit the King's great or privy seal." Such offences, which do not relate to the person of Majesty, or the safety of the realm, but which are, generally, prompted by motives of private lucre, seem to be improperly classed as treasons, punishable with the horrible torments anciently inflicted on traitors. The offence of seal-treason appears to have been founded on a despotic notion, that any misapplication of the royal prerogative by a subject, amounted, in guilt, to an usurpation of sovereignty; it may, probably, have been regarded the more heinous from the circumstance that it was customary with our Kings to let out to farm the profits of their seals.

Hall mentions the fact of two persons being executed as traitors in the 30th year of the King for counterfeiting of the King's *sign-manual*. In the 32nd year of the reign, several servants of the Lord Chancellor were hanged, drawn, and quartered as traitors, for affixing a counterfeit great seal to licenses for denizens who were sorely harassed by a statute against strangers. These traitors did not design to usurp sovereignty, but to make money out of a vexatious law.

This statute gave occasion to a remarkable dispensation and

pardon consequent on Henry's use of a Stamp instead of the Sign Manual. The King, as appears from Rymer, by his letters patent in the 28th year of his reign, declared that he could not sign a variety of public instruments *sine corporis nostri gravidine, et periculo*, deputing Antony Dennye, knight, and others, to stamp writings, without ink, by the King's command, and afterwards to blacken the impression with ink. The King further granted that none of the stamping officers "molestetur, gravetur, occasionetur, aut aliquo modo damnetur pro præmissis, sive aliquo præmissorum; Statuto et Actu nostro concernente contrefacturam signi nostri manualis, aut aliquo alio statuto, lege, sive materia in contrarium factis, habitis, sive editis, non obstantibus." By other Letters Patent of the same year, pardon is granted to Sir Antony Dennye for "quascunque prodiciones concernen-tes sive tangentes contrefacturam, factionem, impressionem, et scriptionem Signi nostri Manualis, necnon omnia et omnimoda concealamenta, locutiones verborum, et prolationes per ipsum Antonium facta, sive habita concernentia sive tangentia dictam contrefacturam, factionem, impressionem sive scriptionem dicti Signi nostri Manualis."

There is another pardon in Rymer, granted, about the same period, in favour of one Sharpe, a monk. In this pardon it is recited that the Archbishop of Canterbury had granted a dispensation to one John Young, to lay aside his religious character, and live a secular life, which dispensation was confirmed by letters patent under the great seal. Whereupon Sharpe forged a dispensation and a confirmation for himself: he cut off the great seal from Young's patent, and affixed it to his own; and so "falsè, felonice et *proditoriè* magnum sigillum nostrum fabri-cavit et contrefecit." The King, according to the record, pietate motus, et mero motu, pardoned Sharpe "proditionem, feloniam, et falsitatem *prædictas*."¹

¹ Lord Coke mentions a case, in the reign of James, of a man joining two parchments fit for letters patent close together with "mouth glew," so that the

(2) *Felonies.*

The new *Felonies* of Henry VIII. that were passed by the Reformation Parliament were not, like the felonies created later in the reign, to use an expression of Sir Matthew Hale, *laid flat* permanently by his children; but were, for the most part, revived with modifications, and paved the way for many truculent enactments; had they been more cruel and tyrannical they would not have entailed on the country so much permanent mischief.

The new *felony* for *vagrancy* created by the Reformation Parliament afforded an example which was followed and enlarged upon in succeeding reigns, when we read, in statutes, of the *galleys*, of branding with the letters V and R, boring of ears with hot irons the compass of an inch, slavery, and irons round the necks, arms, and legs of vagabonds made *slaves*.

Selling, exchanging or delivering any *horse*, *gelding* or *mare* to or for the use of any *Scotchman* was made felony by an Act passed in the 23rd year of the reign, on the grounds of detriment to the King's poor subjects, enfeebling the defence of the kingdom, and giving strength and boldness to Scotchmen; this felony was not finally abolished till the accession of a Scotch King.

Breaking the Bishop's prison by a Clerk convict was made felony, without benefit of clergy or sanctuary, by a statute of the 23rd year of the reign. The statute was ancillary to a law for curtailing the benefit of clergy; its spirit was contrary to the sentiments to be found in one of our most ancient books of law, the *Mirror*, where a merciful consideration is made of the natural desire for liberty: “Abusion est a tenir escape de prisoner, ou debruiserie del Goale pur peche mortel, car cet usage n'est gar-

king's seal affixed to the written parchment, stamped also the blank one glewed to it underneath: he holds this not to be treason, and says, “the delinquent liveth to this day;” Coke and Hale would appear to have judged Sharpe's offence, in the text, not to have been treason. The subject gave rise to a curious discussion in Throgmorton's trial, where the Chief Justice argued, from this precedent, that the statute of Edward did not embrace all treasons at common law.

rant per nul ley, ne in nul part est use forsque in cest Realme, et en France, eins est leu garrantie de ceo faire per la ley de nature."

Embezzlements by Servants were declared to be felonies by an Act passed in the twenty-first year of the reign. In this Act it is recited, that "*noblemen* and other the King's subjects had, upon confidence and trust, *delivered* to their servants their caskets and other jewels, money, goods and chattels, safely to be kept to the use of their masters and mistresses; and, after such delivery, the servants have withdrawn themselves, and gone away from their masters and mistresses with the said caskets, jewels, money, goods and chattels or part thereof, to the intent to steal the same, and defraud their masters or mistresses thereof: or, sometime, being with their masters and mistresses, have converted the same, or part thereof to their own use, which behaviour so done was doubtful, at the common law, whether it were felony or not."

It was, therefore, enacted, that, if the property stolen were of the value of forty shillings or upwards, the offence should, thenceforth, be adjudged a felony; apprentices and youths under the age of eighteen are excepted. By an Act passed in the twenty-seventh year of the reign, servants embezzling the property of their masters were excluded from the privileges of clergy and sanctuary.

This statute of the 21st Hen. VIII. survived till the reign of George IV. Sir Matthew Hale says of it, "This statute was introductory of a new law, when the goods were *actually delivered* to the servant; but yet a servant may be guilty of felony at common law, if he take the goods of his master, though they be under his charge; and therefore, though the statute exempt an apprentice or servant under the age of eighteen, yet, if he take my goods feloniously, *without my actual delivery*, he is indictable of felony at Common Law."

A subtle distinction this of Sir Matthew Hale! He draws

a line between property delivered with the hands of a master, and property over which the servant has a charge, or, in the present language of the law, a *bare charge*. Even in the case of a general charge without a special delivery, it was a bold fiction to suppose that a butler, in the act of purloining plate which it was his duty to take care of, was committing a trespass *in et armis*. The inconvenience had begun to be experienced which, in the present day, involves the criminal law in perplexity and obscurity, viz. that of adhering to a definition of crime suited only to the condition of an uncivilized age, and supplying its deficiencies by numerous statutes, and preposterous constructions.

As the robbery of a Brahmin's gold is, by the Hindoo law made by Brahmims, a very aggravated species of misappropriation, so, in this statute, the Lords and Commons seem to have been anxious to remove that particular one, out of the numerous doubts arising from the definition of theft, which, *in favorem vitae*, might prejudice themselves as masters¹.

(3) *Gypsies.*

Gypsies were punished very severely by a statute passed the twenty-second year of the reign; it contains the following recital, "Forasmuch as before this time divers and many outlandish people calling themselves Egyptians, using no craft norfeat of merchandize, were come into this realm, and gone from shire to shire, and place to place, in great company, and used

¹ When so much nicety was observed with regard to possession and taking, it is remarkable that the Abbot of Glastonbury should have been executed for *robbing the Abbey Church*. An historian observes, that there can be no doubt of his having committed that crime. He does not notice the entry in Cromwell's memoranda: "Item, the Abbot of Glastonbury, to be tried at Glaston, and also to be executed there;" and, in his extract of Lord Russell's description of the Glastonbury trials, he does not insert the significant passage, "And there was never seen in these parts so great appearance as were here at this time, and never better willing to serve the king." It is nowhere stated out of whose possession the property was alleged to have been robbed.

great subtle and crafty means to deceive the people, bearing them in hand, that they, by palmistry, could tell men's and women's fortunes. And so, many times, by craft and subtlety have deceived the people of their money, and also have committed many heinous felonies and robberies, to the great hurt and deceit of the people that they have come among."

It was, therefore, enacted, that no more gypsies were to come into the realm, under pain of forfeiture of goods and chattels, and, if they did not depart within fifteen days after commandment, they were to be imprisoned indefinitely; and if they committed any offence they were not to be entitled to a jury *per medietatem lingue*. Egyptians in the realm at the time of the statute were to depart from it within sixteen days, under pain of forfeiture of goods and chattels, and unlimited imprisonment. Then followed a provision, that every Justice of the Peace, Sheriff, or Escheator who had authority under the Act to seize any goods and chattels of Egyptians as forfeited to the King, should "have, keep and retain a moiety thereof to his own use."

In the sixteenth century Gypsies were expelled from France and from Spain as well as England, not, apparently, in anticipation of any forthcoming emergency, but for want of an effective police. The punishments of the Act savour of the severity which characterizes Parliaments of this reign; and it may be thought to militate with the principles of just legislation, to give a man's goods, apparently without any trial, to the officer who was empowered to seize them.

This statute, however objectionable in itself, was chiefly mischievous in leading the way to more cruel enactments against Gypsies. One of these Sir Samuel Romilly characterized as the "most barbarous statute that ever disgraced our criminal code." Of the statutes against Gypsies Sir Matthew Hale writes, "I have not known these statutes much put in execution; only, about twenty years since, at the Assizes at Bury, thirteen were condemned and executed for this offence." Gypsies were

subjected to unmerciful laws, from the 22d year of Henry III. till the 23d year of the reign of George III.

The following letter, in Ellis's *Collections*, from Lord Cromwell to the Earl of Chester, President of the Marches of Wales, shews that the lives of Gypsies were so little regarded in the reign of Henry VIII., that the Government proceeded to hang one for another.

“After my right hartie commendacions. Whereas the King’s Majestie about a twelfmonth past gave a pardonne to a company of lewde personnes within this realme *calling themselves Gipcyans*, for a most shamefull and detestable murder commytted *among* them, with a special proviso, inserted by their owne consents, that onles they should all avoyde this his Graces realme by a certain day long sythens expired, yt should be lawful to all his Graces offycers to *hang* them in all places of his realme where they myght be apprehended, without any further examynacion, or tryal after forme of the lawe, as in their letters patents of the said pardon is expressed. His Grace, hering that they doo yet lynger here within his realm, not avoiding the same according to his commandment, and their own promes, hath commanded me to sygnifye unto youe and the shires next adjoyning, whither *any of the said personnes calling themselves Egypcyans*, or that hathe heretofore called themselves Egypcyans, shall fortune to enter or travayle in the same. And in case you should hear or knowe of any suche, be they *men or women*, that ye shall compell them to departe to the next porte of the sea to the place where they shal be taken, and eyther, without delaye, upon the first wynde that may conveye them into any parte beyond the seas, to take shipping and to passe therein to outward partyes, *or*, if they shall in any wise breke that commaundement, without any tract to see them *executed* according to the Kings Highnes sayd lettres patents remayning of recorde in his chancery, which, with these, shal be your descharge in that behaufl: not failing t’accomplishe the tenor hereof with all effect

and diligence, without sparing upon any commyssion, licence, or placarde that they may shewe or aledge for themselves to the contrary, as ye tender his Grace's pleasor, which also is that youe shall gyve notyce to all the Justices of Peax in that Countie where youe resyde, and the Shires adjoynant, that they may accomplishe the tenor hereof accordingly. Thus fare you heartily well. The fifth day of December, in the 29th year of his Majestys reign."

(4) *Poachers.*

The forest-laws which were in vigour during the reign of Henry VIII. had contained severe provisions against depredations on the King's game, reaching even to the offence of making the royal deer *pant*. In the early part of the reign of Henry VIII., statutes were passed against tracking hares in the snow, against mummers and the use of vizors, and against using cross-bows and hand-guns, which were levelled more or less directly against poachers. Qualifications of rank and property had been imposed by a statute of Henry VII.

The grounds assigned in the statutes of Henry VII. and Henry VIII. for the preservation of game were the maintenance of the pleasure and disport of landowners, and the sustentation of the "households of lords and gentlemen having great livelihood within the realm;" the latter of which grounds is illustrative of ancient manners, when households consisted of liveried armies, and menial lords.

The Reformation Parliament passed an Act, in which it is recited that, "Whereas, before this time, there hath been within this realm great plenty of wildfowl, as ducks, mallards, widgeons, wildgeese, and divers other kinds of wildfowl, whereby, not only the King's most honourable *household*, but also the houses of the *noblemen* and *prelates* of this realm, have been furnished for the necessary expences of the same houses, at convenient prices, but, also, all markets of the same realm were sufficiently furnished

with wildfowl, there to be sold in such wise that such as were meet to make provision of the same for their houses, might, for their houses, at the same markets, be thereof provided. Nevertheless divers persons next inhabiting in the counties and places within this realm where the substance of the same wildfowl hath been accustomed to breed, have, in the summer season, at such time as the said old fowl be moulted, and not replenished with feathers to fly, nor the young fowl fully feathered perfectly to fly, by certain nets, and other engines and *policies*, yearly taken great number of the same fowl, in such wise that the brood of wildfowl is almost thereby wasted and consumed, and daily is like more and more to waste and consume, if remedy be not therefore provided."

It was, therefore, enacted, that wildfowl were not to be taken between the last day of May and the last day of August under a pecuniary penalty. It was made punishable by imprisonment of a year to take or destroy the eggs of any kind of wildfowl, together with a fine of twenty pence for every egg of a crane or bustard, of eight pence for every egg of a bittern, heron, or shoveland, a penny for the egg of every mallard, teal, or other wildfowl; half of the *penny* or other forfeiture, was to go to the King. There is an exception "That it shall be lawful for any *Gentleman* or any other that may despene forty shillings, by the year, of freehold, to hunt and take such wildfowl with their spaniels only, without using any net, or other engine for the same, except it be a long-bow." The Act was not to extend to crows, choughs, ravens, or their eggs, "or to any other fowl, or their eggs not comestible, or used to be eaten."

Although this Act purports to be grounded on the necessity of procuring cheap and plentiful food for households, especially those of lords and prelates, it is not improbable, that it may have been intended, in some measure, to preserve sporting for qualified persons, and such as possessed hawks. Henry was partial to hawking, to which amusement cranes and herons, the eggs of

which are protected by the Act, were conducive. Hall mentions that "The King lay at Hitchin, in Hertfordshire, to see his *hawks* fly, and, by chance, there the King's lodging was on fire, and he in great fear, but in no jeopardy." On another occasion, Hall tells us that Henry's *hawking-pole* broke as he was leaping a ditch, when he fell into it, and was nearly smothered with mud.

In an Act to be mentioned in a subsequent chapter, a property qualification was imposed on the use of cross-bows, which, it was feared, might supersede the use of the long-bow, and thereby prejudice archery, and might *also* tend to the destruction of the *King's deer*. After the dissolution of the Reformation Parliament, when the reign of Henry VIII. grew more sanguinary, we read of poachers being punished, as for felony, with death.

(5) *Heretics.*

The unhappiness of the people of England in the reign of Henry VIII. is manifested by the circumstance of the utter prostration of liberty of conscience. We have seen how Englishmen were persecuted, in that reign, for their very thoughts, by means of compulsory oaths, and newfangled treasons; but the principal barrier to the progress of opinion, at least of communicated or disclosed opinion, upon religious subjects, was the terrific punishment for heresy. The fires round the stakes of Smithfield, in this and the two subsequent reigns, are the most appalling spectacles in English annals; but, what is still more humiliating in the history of the human intellect is, that, we have extant testimonies, under their own hands, that the persecution of heretics was, in the reign of Henry VIII., countenanced, and promoted, by Sir Thomas More, and Cranmer¹.

¹ It has been observed that, in the reign of Henry VIII., there was, for the *poisoners of the body*, the *burning cauldron*, which is called the "fresh expression of the thought of the Parliament of the Reformation," and that for the "poisoners of the soul there was the stake;" to which are appended the following remarks: "Most shocking when the *wrong persons* were made the victims; and because clerical

In an Act passed in the twenty-fifth year of the reign, it was recited, that, "In most humble wise, lamentably shewen unto your Highness, your most humble loving and obedient subjects the Commons of this your realm; that where the clergy of the same, in the second year of King Henry IV., upon their suggestions, did impetrare and obtain, by authority of Parliament, that it should be lawful for every Ordinary to convert, arrest and imprison any person or persons whom they thought defamed or suspect of heresy, and them to keep in their prisons till they were purged thereof, or abjured, or committed to lay power, to be tried, after the *determination* of the holy Church, and *canonical sanctions*. Forasmuch as the said Act doth not in any part thereof declare any *certain cases of heresy* contrary to the *determination* of holy scripture, or the *canonical sanctions* therein expressed, whereby your most loving and obedient subjects mought be learned to eschew the dangers and pains in the said Act comprised, and to abhor and detest that foul and detestable crime of heresy. And also by cause those words '*canonical sanctions*' and such other like contained in the said Act are so general that *unneth* (not easily) the most expert and best learned man of this your realm diligently lying wait upon himself can eschew and avoid the penalty and danger of the same canonical

officials were altogether incapable of detecting the *right persons*, the memory of the practice has become abhorrent to all just men. I suppose, however, that, if the *right persons* could have been detected, even the stake itself would not have been too tremendous a penalty for the destroying of human souls." Others may be of opinion that the design of human punishment is not to take vengeance out of the hand of God, but to prevent evils injurious to the well-being of society; that the infliction of burning for whatsoever offence is inhuman and impolitic; that opinions involuntarily extracted are not fit subjects for punishment; that the abhorrence of the stake is for better reasons than because clerical officials are incapable of detecting its *right victims*; that the selection of persons to undergo any punishment ought to depend on unambiguous definitions of crime; that in imposing restraints on the freedom of inquiry into human vouchers of divine truths, and in labouring to prevent the destruction of *souls*, both the makers and the administrators, lay as well as clerical, of laws, have most commonly evinced much prejudice, and unreasonable severity, violating liberty of conscience, provoking retaliation, and promoting the spread of opinions which they have attempted to stifle.

sanctions if he should be examined upon such captious interrogatories as is, and hath been accustomed to be ministered by the Ordinaries of this realm in cases where they will suspect any person or persons of heresy. And, over this, as it standeth not with the right order of justice, nor good equity, that any person should be convict and put to the loss of his life, good name, or goods only it were by due accusation and witness, or by presentment, verdict, confession or process of outlawry. And, also, by the laws of your realm, for treasons committed to the peril of your most royal Majesty, upon whose surety dependeth the whole wealth of this kingdom, no person can be put to death but by presentment, verdict, confession, or process of outlawry, as is aforesaid. Wherefore it is not reasonable that any Ordinary, by any suspicion conceived, of his own fancy, without due accusation or presentment, should put any subject of this realm in the infamy and slander of heresy, to the peril of life, loss of name, and goods. And also there be many heresies and pains and punishments for heresies declared and ordained in and by the said canonical canons, and by the laws and ordinances made by the Popes or Bishops of Rome, and by their authorities, for holding, doing, preaching, or speaking of things contrary to the said canonical sanctions, laws, and ordinances, which be but human, being merely repugnant and contrarious to the prerogative of your imperial crown, regal jurisdiction, laws, statutes and ordinances of this your realm. By reason whereof your people of the same for observing, maintaining, defending, and due executing of your said laws, statutes, and prerogative royal, by authority of that Act made in the second year of Henry IV., may be brought into slander of heresy, to their great infamy and peril of their lives."

It was, therefore, enacted that the Act made in the second year of Henry IV. should be repealed: "Nevertheless, forasmuch as the most foul and detestable crime of heresy should not hereafter grow and increase, but utterly be abhorred, detested, and

eradicate, nor that any heretics should be favoured, but that they should have condign and sufficient punishment, and for the repression of heretics and such erroneous opinions in time coming," it was enacted that the statutes of the *fifth of Richard II.*¹, and the second of Henry V., concerning punishment and reformation of heretics and Lollards, should be confirmed.

Every person presented or indicted of heresy, or duly accused or detected thereof by two lawful witnesses, to any Ordinary, might be arrested by the said Ordinary, or *any other* the King's members or *subjects* whosoever. After being arrested, they were to be committed to answer to their accusations before the Ordinary in open court and in an open place. If convicted, they were to abjure and renounce their heresies, and do reasonable penance according to the discretion of the Ordinary. If they refused to abjure, or, after abjuration, fell into relapse, and were convicted thereof, then they were to be "committed to lay power to be *burned* in open places for example of others, as hath been accustomed, the King's writ *De heretico comburendo* first had and obtained for the same."

It was recited, that an opinion had been entertained by a great number of the King's subjects "having little or no learning or knowledge of letters," that to speak or do any thing against the pretended power of the Bishop of Rome was heresy; and it was, therefore, enacted that "no manner of speaking, doing, communication or holding against the Bishop of Rome, or his pretended power or authority made or given by human laws or policies, and not by holy scripture, nor any speaking, doing, communication, or holding against any laws called spiritual laws made by the authority of the See of Rome, by the policy of men, which be repugnant and contrariant to the laws and statutes of this realm, or the King's prerogative royal, shall be deemed, reputed, accepted or taken to be heresy."

¹ The first statute against heresy; it was never assented to by the Commons, so it is called by Hale a *pretended* statute. See also 12 Coke's *Reports*.

It may be observed of this Act, that, notwithstanding the forcible complaints contained in it of the uncertainty of the crime of heresy, nothing definite is provided on the subject, except a safeguard against heresy being made a pretext by Bishops for destroying the partisans of the King in his quarrel with the Pope. It was in speaking of a statute in the reign of Elizabeth that Sir Matthew Hale wrote: "Here is the *first* boundary that was set to the extent of heresy as to the matter thereof, *what* only shall be adjudged heresy. But, it is true, it is not so particular and certain as might have been wished, for, according to the *inclination of the Judge*, possibly some would determine that to be heresy by the canonical scriptures, which possibly is not at all heresy, but, however, it brought heresy to *a greater certainty than before*."

The Act, with whatever object designed, insured the signal benefit of an open trial. But the times demanded other limitations of heresy than with regard to reviling the Pope. In the same year that this Act of Parliament was passed, the Convocation disinterred, after he had been buried three years, and burned the corpse of a Gloucestershire Squire of the name of Tracy, for making a will which contained the following passage: "My belief is, that there is but one God, and one mediator between God and man, which is Jesus Christ; all other be but petitioners in receiving of grace, but none able to give influence of grace. And, therefore, I will bestow no part of my goods for that intent that any man should say or do ought to help my soul." The will had been brought to the Archbishop of Canterbury to be proved, and was by him shewn up to the Convocation¹.

Another remarkable instance of the latitude given to the offence of heresy occurred not long after the passing of this Act. It has been seen by what subtle construction of words *closely*

¹ Hall states that the Chancellor of Worcester, who executed the sentence, paid £300 for his pardon, not, as an historian supposes him to have said, that Archbishop Warham was fined. The Chancellor had merely obeyed his commission, but fell under the rule, *Dat veniam corvis, vexat censura columbas*.

couched any express or implied denial of the King's supremacy was made high treason. This was not enough: the clerical Judges must outvie the lay Courts in punishing such denials, by adjudging them to be heresies. Friar Forest, for an *heretical denial of the King's supremacy*, was burned in Smithfield, there being prepared for him "a gallows, on the which he was hanged in chains by the middle and armholes all quick, and under the gallows was made a fire." Cranmer was then Archbishop of Canterbury, and Latimer preached the sermon at the stake, which, in a letter to Cromwell, he calls "playing the fool after my customizable manner." Some official verses "set up in great letters upon the gallows he died on" indicate the *species* of heresy which Forest was adjudged to have committed. The Poet-laureat¹, in the commencement of his elegy, notices a great image brought out of Wales which was burnt along with Forest, and concerning which there was a prophecy, that it should set a whole *forest* on fire, which prophecy, writes Hall, then took effect:

David Darvell Gatheren
As say the Welchmen
Fetched outlaws out of Hell.

Now he is come, with spear and shield,
In harness, to turn in Smithfield,
For, in Wales he may not dwell.

And Forest, the Freer,
That obstinate liar,
That wilfully shall be dead,

In his contumacie
The Gospel doth deny,
The King to be Supreme Head.

¹ See, in Selden's *Titles of Honor*, an interesting episode addressed to Ben Jonson, on the existence of a *laureat* in the reign of Henry VIII. The verses in the text are anonymous, but are not unworthy of the laureat Skelton, the author of *Eleanor Rummung*.

CHAPTER XI.

CRIMINAL PROCEDURE.

A N adequate view of the inequality of criminal procedure in the reign of Henry VIII. is not to be obtained from statutes, inasmuch as procedure is governed, in a great measure, by judge-made rules¹; and the numerous statutory Attainders in the reign of Henry VIII. overleaped every ordinary form of procedure, even the sight of the accused by his judges. In the State Trials which have been incidentally referred to in the course of this work have been exhibited the springs of Indictments to ensnare Anne Boleyn and Sir Thomas More, and, also, the avowed practice of examining prisoners by Commissioners, for the purpose of concocting charges founded on their direct, or indirect answers, and even on their silence.

¹ It will, probably, be inferred, that various practices, of the same nature as those used on the Trial of Throgmorton, in the first year of Queen Mary's reign, were rife in the reign of Henry VIII. One passage, in particular, of Throgmorton's prosecution clearly indicates the pre-existence of an unfair rule, that of the exclusion of a prisoner's witnesses; as thus, Throgmorton had produced a witness concerning whom the Attorney-General prayed, that he might not be sworn nor allowed to speak; whereupon it was said by the Judges, "Go your way, Fitzwilliams, the Court has nothing to do with you; peradventure you would not be so ready in a good cause." On which Throgmorton reminded the Judges, that the Queen, on calling them to their offices, had enjoined them that "notwithstanding the old error among you, which did not admit the witness to speak, her Majesty being a party, Her Highness' pleasure was, that whatsoever could be brought in favour of a prisoner, should be admitted to be heard." The Chief Justice replied, "You mistake the matter; the Queen spake these words to Master Morgan, Chief Justice of the Common Pleas." A Statute of Edward VI., requiring that accusers, in treason, should be produced in Court before a prisoner, face to face, shews, in addition to numerous other proofs, that the evidence in State Trials had, theretofore, usually consisted of *hearsay*. With regard to the provision of the Statute of Edward VI. requiring two witnesses in prosecutions for treason, Bishop Fisher insisted that two witnesses were requisite at common law; this is doubtful, but it is agreeable to the opinion of Lord Coke.

The matters to be treated of in the present chapter, relate to, (1) The Star Chamber, (2) Benefit of Clergy, (3) Sanctuary, and, herein, of juries, (4) Appeals and Restitution, (5) Trials for Piracy, and, herein, of Torture.

(1) *The Star Chamber.*

The Star Chamber was the tribunal to the aid of which the Princes of the House of Tudor principally owed the maintenance of their high prerogatives. There is some obscurity concerning its origin and proper appellation; but there is no doubt of Henry VII. having instituted a Court of State for the trial of six specified offences, *viz.* (1) maintenances, and liveries, (2) retainers, (3) embraceries, (4) untrue demeanors of Sheriffs in making of panels of jurymen, and other untrue returns, (5) taking of money by juries, (6) riots and unlawful assemblies¹. In the constitution of this Court a modification was introduced in the first session of the Reformation Parliament; the President of the King's Council was then associated with its other members in executing the Act of Henry VII.

The admission of the President of the Council into the Court of Star Chamber was conducive to the judicial powers of that Court being exercised in harmony with the sentiments of the Government. It was, indeed, under colour of the ancient powers of the King's Council, that the Star Chamber frequently transgressed the limits of the Statute of Henry VII. Lord Clarendon writes that, in his time, the Council framed proclamations in one room, and enforced them in another, *viz.* the Star Chamber. We learn from Sir Thomas Smith that the authority of the Star Chamber had been amplified by Wolsey, and that Henry VIII.

¹ Lord Coke adds *injuries*, which, he says, is a large word. This Statute of Hen. VII. was passed in the last year before the use of English in Statutes became universal; it would seem that Lord Coke was mistaken in his version. Barrington mentions that the Court was not stated to be held by the name of the *Star Chamber* till 19 Hen. VII. cxviii.; the name, however, occurs in the title of the Statute 3 Hen. VII.

had, through its instrumentality, reduced his nobles to order by the discipline of rebuke and of *fleeting*.

It may be supposed that the power vested in the Star Chamber of punishing Sheriffs for undue returns of panels would have increased the influence of the Government in the constitution of Juries. We further learn, from the Act, that the President of the Council was associated with the Chancellor, Treasurer, and Keeper of the Privy Seal at the naming of Sheriffs, who were to return panels; and, by an earlier statute of the reign, Judges, in criminal cases, were authorized to reform panels. Thus the King by possession of a triple security, in addition to challenges at Common Law, knew who were his jurors, and their fitness for the nonce; as Lord Bacon quotes from Martial:

“Principis est virtus maxima, nosse suos.”

Of the punishment of Juries, by this tribunal, for unacceptable verdicts, we have a very notorious example, in the reign of Mary, in the instance of the Jury which acquitted Throgmorton; several of whose Jurors were fined £2000 each, and imprisoned *till further order*. Sir Thomas Smith gives us the following account of similar practices: “But, if they do pronounce not guilty upon the prisoner, against whom manifest witness is brought in, the prisoner escapeth; but the twelve be not only rebuked by the Judges, but also threatened of punishment; and many times commanded to appear in the Star Chamber, or before the Privy Council.” He mentions that Juries, within his recollection, had been punished for their verdicts, with “huge fines,” and had been put to “open ignominy and shame.”

In a letter by Lee, Bishop of Coventry and Lichfield, to Lord Cromwell, written in the year 1536 (in Ellis's *Collections*), after mention of an acquittal by a Gloucestershire jury, it is written: “And, thereupon the said Jury was, and is bound to appear at the next Assizes, and, in the meantime before the

King's most honourable Council, in the *Star Chamber*." It appears that this acquitting Jury had, nevertheless, convicted two traitors, "whose heads and quarters shall be sent to eight of the best towns of the shire." We read of Lord Cromwell "roughly handling a Grand Jury," which he would not have had an opportunity of doing, except in the Star Chamber. We read, also, of the Privy Council writing to the Duke of Norfolk, about examining the *consciences* of a Jury guilty of acquittal, and sending a list of their names for the information of the Star Chamber. It will be seen, in the chapter concerning *Wales*, that the punishment of jurors for acquittals in the principality was authorized, by a statute, to be inflicted by the President and Council of Wales, who, with the President and Council of the North, constituted, in the time of Henry VIII., petty Star Chambers. They fell, in the reign of Charles I., by the same Act which abolished the principal Star Chamber to which the President of the King's Council was, by the above provision, attached.

The following miscellaneous decrees of the Star Chamber in the reign of Henry VIII. are taken from a collection in the *Archæologia*; they exhibit its arbitrary character, and the latitude assumed for its jurisdiction.

Slanderous Bills against the King's Highness and his Council having been anonymously published, two Aldermen and one Knight were directed to go, in each ward, to every merchant's house and take the last book of his wares, and seal and carry it to Guildhall, "there to remain until such time as they be duly searched, whether there be in them anie such like hand as is contained in the said Billes, or any of them, and thereupon to be re-delivered to the merchants after due search made."

Edmond Finch, who had been committed to the Marshalsea for slander of Sir Thomas Cheney, was ordered by the Star Chamber to be conveyed to the Sheriff of Kent, with letters to see him punished by *standing in the pillory* on two market-days, one at Cranbrook, the other at Dartford, with a paper on his

head written in great letters, "For slanderous words of the King's Council."

John George, of Bramley in Hampshire, having spoken seditious words, as was declared by Richard Bullock, the said Richard was sent with letters to *William More* for his examination, and, *in case* the said George should be author of the matter, then to cause him to have his ears *nailed to the pillory*.

Royal Proclamations were guarded even from imitation, with great jealousy, by the Star Chamber. In the 22nd year of the reign (the year after the passing of the Act under consideration), in the case of a Knight, who, happening to be an executor, caused *notice* to be published in several towns, that all persons to whom his testator was indebted, coming to him should be paid. For this offence he was fined, and committed to the Fleet (*Fleeted*).

Tindal's translation of the Bible had been printed abroad, and was transmitted for sale to his brother John Tindal and Thomas Patmore, merchants of London. After dispersing them secretly for some time, these publishers were taken before the Star Chamber. Sir Thomas More, who was then Chancellor, pronounced the sentence of the Court upon them.—That they should ride on horseback round the City, with their *faces turned to the horses' tails*, wearing papers on their heads, and some of the books they had sold pinned or tacked to their gowns or cloaks. After having completed their tour round the City, they were to be brought to the Standard in Cheap, where, with their own hands, they were to consign the books to the flames. In addition to this they were to pay such fine as the King should please¹.

We learn from a sentence of the Star Chamber at this period that a Statute of Richard II. (not repealed till 4 James I. c. 1), inflicting loss of goods and chattels for going beyond sea without

¹ There are several accounts of the amount of fine which pleased the King; the lowest is £1840. os. 10d.

the King's license, was actually enforced in the reign of Henry VIII. in the case of John Arundell, Esq., who appears to have been *fleeted* for that offence.

There is an instance preserved of Henry VIII. pronouncing sentence, in person, in the Star Chamber ; it was in his own case. Sir William Bulmer, a sworn servant of the King, had declined the royal service, and had become a retainer of the Duke of Buckingham. The King, in his assumed judicial capacity, laid it down, "that he would none of his servants should hang on another man's sleeve."

(2) *Benefit of Clergy.*

In theory, the famous Benefit of Clergy, indicated only a peculiarity of procedure, by means of which ecclesiastics could not receive punishment for felonies, except after being tried and sentenced by an ecclesiastical Judge. But, in process of time, the privilege was extended to such of the laity as were *capable* of being made clerks, not, however to women, who were not possible clerks. The test of the capability of a layman becoming a clerk, was that of being able to *read* ; thus distinguishing between the educated and illiterate part of the community, as between the sexes, in the liability to loss of life, perhaps for the same offence committed together ; and this, although the scholar and the male offender might seem to have been fitter objects of punishment. By degrees, the ecclesiastical trial and sentence became illusory, and after many modifications by time or by law, Benefit of Clergy was abolished in the reign of George IV.

Henry VII. abridged the Benefit of Clergy, in the case of persons not in holy orders, by rendering it only once claimable ; and, in the instances of petty treason, and military desertion, he introduced the important principle of excluding the privilege for offences without regard to literary aspects. But, still, real clerks were not molested in the enjoyment of the privilege which they founded on the text "Touch not mine anointed, and do my

prophets no harm." In the fourth year of the reign of Henry VIII. a statute was passed for making addition to the list of unclergyable offences; but it was enacted to continue only till the next Parliament, when it was not revived. The Act, although it did not affect real clerks, kindled a fierce flame of opposition among the clergy, who denounced by very hard names all such as favoured it, and even persecuted one of its apologists for heresy. Fortunately, the King's personal interest in forfeitures conspired with public policy, in accomplishing the curtailment of the privileges of clergy and sanctuary.

In an Act, passed in the twenty-third year of the reign of Henry VIII., it is recited, that "manifest thieves and murderers indicted and found guilty of their misdeeds by good and substantial inquests, and upon plain and proveable evidence before the King's Justices, and, afterwards, by the usages of the common laws of the land, delivered to Ordinaries as clerks convict, be speedily and hastily delivered and set at large by the ministers of the said Ordinaries for *corruption and lucre*; or else because the said Ordinaries, enclaiming such offenders by the liberties of the Church, will in no wise take the charges in safe keeping of them, but little regarding the trial and conviction of the said offenders by the due and plain course of the common laws of the land, do suffer them to make their purgations by such as nothing know of their misdeeds; and by such fraud annul and make void all the good and proveable trial that is used against such offenders by the King's laws."

It was therefore enacted, that privilege of clergy should be taken away from persons convicted of "wilful murder of malice prepensed; or of robbing of any churches, chapels, or other holy places; or for robbing of any person or persons in their dwelling houses, or dwelling place, the owner or dweller in the same house, his wife, his children or servants then being within; and put in fear and dread by the same; or for robbing of any person or persons in or near about the highways, or for wilful burning of

any dwelling houses or barns wherein any grain or corn shall happen to be ; " accessories in like manner to be excluded from clergy.

The Act was temporary, being to continue till the last day of the next Parliament, and it was not to apply to clerks in orders of the rank of subdeacons and above. Clerks in orders, however, were to remain in the Ordinary's prison during their natural lives, unless they found "sureties for good abearing." And the Ordinary, if he thought proper, might degrade any clerk convict, and send him to the court of King's Bench for judgment of death.

It was a very important step gained for the improvement of criminal procedure, to have rendered capital punishment, in the instance of a variety of offences, dependent on their heinous character, and not on the education of the offender; the Reformation Parliament did not venture upon a further improvement, that of excluding from the privilege of clergy clerks in orders convicted of the more atrocious offences. Nevertheless, the list of real clerks was confined to the ranks of subdeacons and upwards; and they were exposed to imprisonment and peril of their lives, to which they had not, recently at least, been subjected. It has been seen that, under several statutes, clergy was taken away, by the Reformation Parliament, for specific offences, as by the retrospective Act on poisoning (modelled after a similar retrospective Act of Henry VII., in the case of petty treason); and by that for suppressing the hateful offence of embezzlement by servants; to servants this Parliament, afterwards, joined Pirates.

It will have been observed that Benefit of Clergy is, by the statute, taken away from "*wilful murder of malice prepensed*," a form of expression which seems to intimate that there might be *murder* without malice prepensed. The term *murder* originally signified a *secret* killing, particularly of a Dane or a Roman; it, afterwards, dwindled into a mere aggra-

vatory expression, not differing, in substance, from the charge of manslaughter. In some general pardons, however, there are to be found exceptions of prepensed murder; but it is from the statute under review that the modern distinction between murder and manslaughter is to be dated. With a view to the benefit of clergy, prepensedness became a material point in issue, and *murder* and manslaughter were thence adopted as convenient terms to distinguish unclergyable from clergyable homicide. To the present day, a person indicted for murder, may be found guilty of manslaughter, which encourages compromises, and operates like the French finding of *extenuating circumstances*.

It is a question of some interest, to what extent the benefit of clergy mitigated the severity of Henry's laws? As to which it is probable that this privilege, as well as that of Sanctuary, besides being maintained by ecclesiastical power and influence, derived, in some degree, acquiescence as palliatives of sanguinary legislation, a species of reaction by means of which our Criminal Code has been much disfigured. But it is to be observed, that from the date of this Act, during the most sanguinary period of the reign, privilege of clergy was taken away from the grosser class of offences, and that, before the end of the reign, the privilege was further curtailed. It was not applicable to traitors or to women, nor, since the reign of Henry VII., to lay convicts above once. With regard to felonies in which the privilege had not been taken away by statute, as, for instance, the very common cases of larcenies, they were not, generally, such as would have been committed by real clerks above the rank of subdeacon, or by laymen of education. Indeed, reading was a feat of scholarship not universal among the nobility; thus, a statute was passed, in the reign of Edward VI. to extend the privilege of clergy to peers, although they might not be able to read. It was a misdemeanor to instruct a felon, when in goal, to read, in order to save his life. One of the articles of inquiry given

in charge by the Court of King's Bench, was that "Des Gardiens des prisons qui apprennent les laiz perçons qui sont en leur garde, lettere, per cause de salvation de leur viz, al desturbation de la common ley, que la justice ne se puit pas faire per eux comme sur laiz gens, en deceit del roy¹."

Benefit of Clergy was no impediment to the execution of Martial Law. After the Rebels in the Northern insurrection had *dispersed*, the Monster-King wrote to the Duke of Norfolk, "Our pleasure is, that, before you shall close up our banner again, you shall cause such *dreadful* execution to be done upon a *good number* of the inhabitants of every town, village, and hamlet that have offended, as they may be a *fearful* spectacle to all others hereafter that would practise any like matter, remembering that it should be much better that these traitors should perish in their unkind and traitorous follies, than that so slender punishments should be done upon them, as the dread thereof should not be a warning to others. Finally, forasmuch as all these troubles have ensued by the solicitation and traitorous conspiracies of the *monks* and *canons* of these parts, we desire you, at such places as they have conspired and kept their houses with force since the appointment at Doncaster, you shall, *without pity*, or *circumstance*, cause all the monks and canons that be in any wise faulty, to be *tied up without further delay or ceremony*²."

¹ See, in Kelyng, an instance of a Judge fining a parson five marks for falsely averring that a culprit, whom it was his duty to examine, could read.

² A recent historian has argued that the benefit of clergy had the effect of reducing to a fraction the already small number of offenders whom juries could be found to convict. He addresses himself with dexterity to Cardan's 72,000 hanged culprits, and Sir Thomas More's twenty felons hanging upon one gibbet; howbeit there is plenty further to the same effect in More's writings, which he has pretermitted. If there was only a small number of offenders convicted, and those reduced to a fraction by the benefit of clergy, it was hardly necessary to have passed the Statute 34 and 35 Hen. VIII., wherein Clerks of the Crown, Clerks of the Peace, and Clerks of Assize were charged with embezzling records of convictions, whereby the King and others "had lost their escheats and forfeitures." The repealing acts of Edward VI. and Mary were scarcely directed against *bruta fulmina*. The contemporary Hall repeatedly carries his readers

(3) *Sanctuary.*

Sanctuary was the most ancient obstruction to criminal process known in English law. It arose out of the inordinate power of the clergy in credulous times; and derived support from a cause adverted to, in a previous chapter, as having been censured by Sir Matthew Hale, viz. the injudicious adoption of rules and institutions, because they had been prescribed for the Israelites by the law of Moses. As Cities of Refuge had been established in Palestine, so were Sanctuaries admitted as parcel of the Common Law of England; and this relic of Judaism was not abolished amongst us till the reign of James I.

There were two kinds of Sanctuaries, *particular*, as at Westminster, where the fugitive might remain during his life; and *general*, as every church, where the privilege was limited to forty days; after which time the fugitive was to take an oath to depart from the realm, which was called *abjuring*, and to proceed, accordingly, with a cross in his hand, to some port indicated, and there embark. In the present day are to be seen some remains of stone pillars or crosses, to mark the limits of the sanctuaries appertaining to particular churches.

With regard to the criminals for whom Sanctuary afforded shelter, it is obvious that the perpetrator of sacrilege could not consistently ask protection of priests. Upon Jewish principles, none could take sanctuary, but such as were in peril of life: however, by an astute construction, worthy of Rabbis, the English Judges held, that a *debtor* might take refuge in a sanctuary, because, peradventure, imprisonment in a common gaol might put his *life* in danger. Persons accused or suspected of treason,

with him to Tyburn, Tower Hill, and Smithfield, when he has no better sight to shew them; Latimer is apparently using an expression with which his hearers were familiar, when he talks, in his sermons, of a *Tyburn-tippet*. It has been seen (p. 104) that a Statute of the 21st of the King confirms a decree of the Star Chamber founded on a representation that "poor English handicraftsmen had been put to death by our laws in great numbers."

might, at Common law, have taken sanctuary; but there were royal ways of dragging them out; and Lord Bacon has related the artifices by which Henry VII. extracted out of two sanctuaries the person of Perkin Warbeck. By an Act passed in the 26th year of the reign, the privilege of sanctuary was taken away from all offenders in high treason. Servants and Pirates were, in separate Acts, declared to be unworthy of Sanctuary.

By an Act passed in the twenty-first year of the reign, it was enacted that every sanctuary-man for felony or murder, should, after his confession, be branded by the Coroner on the brawn of the thumb of the right hand with the letter A, and then should be given his abjuration. If any felon or murderer, after such abjuration refused to take his passage out of the sanctuary at a time limited by the Coroner, he should lose the privilege of Sanctuary.

As this Act had the effect of banishing sanctuary-men from the realm, a new policy was adopted in the next Session of Parliament, by an Act passed in the twenty-second year of the reign. In that Act it is recited, that many sanctuary-men who had abjured the realm were "expert mariners and apt for the wars, so that the strength and power of the realm was greatly diminished; that others of the abjured had *instructed foreigners in archery*, to the great increase and fortification of outward realms, and had disclosed their knowledge of the commodities and *secrets of this realm*."

It was, therefore, enacted, that, instead of abjuring the *realm* as before, sanctuary-men should abjure from the "*liberty of the realm*, and from liberal and free habitations, resorts and passages to and from the universal places of this realm which appertain to the liberty of the King's subjects undefamed." After having made this abjuration, they were to be conveyed to whatever sanctuary they chose, there to remain as sanctuary-men *abjured* during life. If the abjured fugitive came out of such chosen sanctuary, he was to suffer death as an abjured person returning

to the kingdom. If he committed petty treason, murder, or felony, either in or out of sanctuary, he was to lose its privilege.

There is a remarkable exception of offences of a "higher nature in the law" than the offences specified in the Act, though these include murders: a few years afterwards this Parliament took away all sanctuary from treason; it may have been judged expedient that, for the present, suspected traitors, flying to sanctuary, should, as before the Act, be transported for life.

A third Act on the subject of sanctuaries was passed in the twenty-seventh year of the reign; its purpose was the better government of privileged persons within sanctuaries. In this Act it is recited, that, "Where upon trust of sanctuaries and the licentious liberties that heretofore have been and yet daily be used in the same, divers persons have been the more bold to perpetrate many detestable murders, rapes, robberies, thefts and other mischievous, detestable and abominable deeds; for that they have been always relieved, aided, and succoured by the sanctuaries, whosoever as they or any of them have offended in any of the premises; to the most grievous displeasure of Almighty God, and extreme detriment and hurt of the King's subjects."

"In avoiding of such presumptuous boldness" it was enacted, that sanctuary-men going out of their lodgings should wear a badge to be appointed by the Governor of the Sanctuary, openly upon their upper garments, of the length and breadth of ten inches; that they should not occupy or wear any sword, knife, or other weapon, other than meat-knives at meals; that they should not go out of their lodgings before sun-rise, or after sun-set; all upon pain of loss of sanctuary. It was made felony, without sanctuary, for any sanctuary-man to resist the Governor. A Court was to be held by the Governor for the determination of pleas under forty shillings between privileged persons and other inhabitants of any sanctuary. Partial restrictions of the privilege of sanctuary were enacted in later statutes; but

though *reformed indifferently* by the Parliaments of this reign, it is the more surprising that such an obstacle to public justice was not *reformed altogether*.

A contemporary notice of the excesses of sanctuary-men appears from a letter in Ellis's *Collections*, wherein one Stubbs, who was, for a time, President of Magdalen College, Oxford, and who held charge of the napery in Wolsey's household, wrote to the Cardinal in these terms: "Since your Grace departing, there hath been here great assemblies and bushments of persons suspect of felony, which have used the company and familiarity of sanctuary-men, and at two sundry days did rescue such vagabonds as the constables for their misdemeanors would have imprisoned in the gate-house. Which after I had knowledge of, I counselled with Mr Stuse and Mr *Cromwell*, and together we spake with the Abbot therein ... and since that time the sanctuary-men have been more straitly kept in than they were afore; before whereof one Mulray, that was the King's servant, being a sanctuary-man at Westminster, hath refused the same, and goeth abroad; who, as I hear, hath a great number of unthrifty persons belonging to him, of whom Sir Hugh Vaughan's servants yesterday and this morning took eight who had stolen horses, and hath them in hold. It is much suspect these bushments intended to have done some displeasure at your mansion called York-place. This last night, as I am credibly informed, one of my lord Stewart's servants at Chelsea, in his own house, was sore wounded by such persons as were followed to the sanctuary, but yet they be not taken, nor known."

Extracts from an ancient Register of persons who sought sanctuary at St John of Beverley in Yorkshire, in the reigns of Edward IV., Henry VII. and Henry VIII., will be found in the *Archæologia* (Vol. xvii.), together with directions for the confession of sanctuary-men, and the following form of oath to be administered to them upon admission:

"Sir, take heed on your oath. Ye shall be true and faithful

to my lord Archbishop of York, lord of this town, to the Provost of the same, to the Canons of this Church, and all other ministers thereof. Also ye shall bear good heart to the Baily and twelve governors of this town, to all burgesses and commoners of the same. Also ye shall wear no pointed weapon, dagger, knife, ne none other weapon against the King's peace. Also ye shall be ready, at all your power, if there be any debate, or strife, or other sudden case of fear within the town, to help to s'cess it. Also ye shall be ready at the obit of St Athelstan, at the Dirige and the Mass, at such time as it is done at the warning of the bellman of the town, and do your duty in ringing, and do offer at the Mass in the morning; so help your God and these holy evangelists. And then gar hyn kysse the Book."

(4) *Appeals, and Restitution.*

The Law of England presented the extraordinary anomaly of criminal Appeals even to living memory when a life-guardsman's glove was thrown down on the floor of the Court of King's Bench as a challenge of battle for trying an appeal of murder, after the appellee had been acquitted by a Jury upon an indictment. An Appeal was a form of prosecution which involved capital punishment unpardonable by the Sovereign, and which was conceded, by the law, to the passions or caprice of the parties who had sustained, or imagined that they had sustained, the injury for which they sought redress or retaliation. It has been seen that the Reformation Parliament recognised an appeal even in a case of *treason* by poisoning. Appeals of robbery and of theft had this advantage over indictments, that the property stolen or robbed was restored to the successful appellant; whereas, on convictions by indictment, the King was a second taker with a more tenacious grasp than the first. In time it came to be found that prosecutors would not indict to the King's use, when they could recover their property, in an Appeal, to their own. When, however, indictments were made restitutive

of property stolen or robbed, they speedily came to be preferred to Appeals, in which the appellant might be driven to fight, and, perhaps, might cry *craven*. An Act was passed in the first session of the Reformation Parliament, during the Chancellorship of Sir Thomas More, for granting restitution of stolen goods upon an indictment for theft or robbery.

By that Act, persons who had lost property by robbery or theft, and who indicted the offender, provided a conviction was obtained through their means, were entitled to restitution, by writ, of the property robbed or stolen. This restitution is enacted to be "in like manner as though any such felon were attainted, at the suit of the party, in an Appeal."

The law is further improved, in the present day, by Criminal Appeals (in the sense of the statute) being abolished; and by restitution being obtainable by an *order*, without the expense of a writ. A great benefit, however, was, in the reign of Henry VIII., conferred on the community, with addition to the dignity of the Sovereign, by tempting persons to relinquish, from choice, a mode of remedy fraught with so much public inconvenience as that of Appeal. The Reformation Parliament can scarcely be blamed for not abolishing Criminal Appeals altogether, when we find Lord Holt extolling them as "a most noble birthright of an Englishman," and Lord Coke upholding Trial by Battle as founded on the precedent of David and Goliath.

(5) *Trials for Piracy.*

The increasing commerce of the kingdom, the new spirit of maritime discovery, the recent formation of the piratical states of Barbary, indicated the necessity of efficient legislation for promoting the safety of the seas from human violence. Letters Patent, in the nature of *Brief*, will be found in Ellis's *Collections*, whereby Henry VIII., in the year 1515, authorized a charitable contribution toward the relief of prisoners in Barbary. The Brief sets forth, that a ship, called the *Christ*, had been freighted

with wool to the Levant, and had been attacked off the coast of Barbary by Moors and Infidels, "enemies to the Christian faith;" that all the English crew were killed, except thirty, who, with the ship, were taken to Tangier; that the Christian captives were kept in irons, and, for sustentation, had nothing but bread and water. In another letter, in the same *Collections*, mention is made of the loss, by Pirates, of a rich merchant vessel "upon the sea of Norway."

The Reformation Parliament had due regard to this new national want. It applied to the trial of Piracies an effectual procedure, instead of one that was generally impracticable, from the difficulty of procuring the testimony required in the Court of the Admiral. The substitution of the law of England for the Civil Law, which this statute first established, has been ever after adhered to, and has been extended to the colonies. By a statute of Victoria, the issuing of special commissions, as provided by the Statute of Henry VIII., for the trial, in England, of persons charged with offences committed at sea, has been dispensed with, and the offenders have been subjected to the ordinary jurisdiction of Judges of Gaol-delivery.

In the statute passed by this Parliament for the trial of piracy it was recited, that "where pirates, thieves, robbers and murderers upon the sea many times escape unpunished, because the trial of their offences hath heretofore been ordered before the Admiral, after the course of the civil laws, the nature whereof is, that, before judgment of death can be given against the offenders, either they must plainly confess their offences (*which they will never do without torture or pains*), or else their offences be so plainly and directly proved by witnesses *indifferent*, such as saw their offences committed, which cannot be gotten but by chance at few times. And also such as should bear witness be commonly mariners which, for the most part, cannot be gotten, nor had ready to testify, because of their often voyages, without long protraction of time and great charges."

It was therefore enacted, that all such offences committed on the sea should be tried by a jury in any county, under the King's Commission, and that the offenders should be punished as felons; and should lose the benefit of clergy, and privilege of sanctuary.

Blackstone, in his usual vein of panegyric, finds a motive for this statute, which is not avowed by the Parliament that passed it. He writes, and the passage is retained by most of his modern editors, "But, it being inconsistent with the liberties of the nation, that any man's life should be taken away, unless by the judgment of his peers, or the common law of the land, a new jurisdiction was established for this purpose, which proceeds according to the course of the common law¹." There would, doubtless, be an advantage to an innocent man from an impartial trial by Jury; yet, it may seem, from the above preamble, that this liberal view of the subject was not contemplated by the law-makers of Henry VIII., but that they were actuated by a desire more congenial to them, of wresting from offenders the means of escape afforded by the technicalities of the Civil Law. Another motive may have had its influence. Piracy, not being a felony by the common law, did not occasion forfeiture of lands and goods. It is not made a felony by the Act, but punishable like a felony; that is to say, the King was thenceforth to derive the same personal benefit from the conviction of any pirate, as from that of a felon.

The parenthesis "(which they will never do without torture or pains)" may be thought to shew that the practice of torturing accused persons is not spoken of with abhorrence by the Legislature as a mode of investigation unfamiliar to them, but that it is recited as an ancient and acknowledged practice in this country, in all offences tried before the Admiral.

¹ Blackstone applies his remarks to the Statute of the 28th Hen. VIII. concerning piracy, of which the preamble and provisions are identical with those of the 27th Hen. VIII., with this only difference, that the former allowed three of the Commissioners to be a quorum, the latter, four.

Another indirect but significant allusion to torture occurs a few years later, in a Statute of Edward VI., concerning confessions in treason being made "willingly, without *violence*." Upon this expression, and, particularly, with reference to its being copied into the statute for the trial of treasons of William III., Sir Michael Foster makes the following remarks: "The Common Law knew of no such engine of power as the rack, or torture, to furnish the Crown with evidence out of the prisoner's mouth against himself or other people. It was, as Lord Coke informeth us, first brought into the Tower in the time of Henry VI. directly against law; and it cannot be justified by any usage. But it was practised for *more than a century* afterwards. This accounteth extremely well for inserting the words *without violence* in the Statute of Edward VI. I cannot so easily account for them in that of King William."

Sir Thomas Smith, who, in his capacity of Secretary of State, had practical experience of the infliction of the rack, writes, in his *Commonwealth of England*, that "the nature of Englishmen is to neglect death, to abide no torment. And, therefore, he will confess rather to have done any thing, yea, to have killed his own father, than suffer torture." Smith entreated Lord Burleigh, in the reign of Elizabeth, to be released from the task of superintending tortures, in these terms: "I do most humbly crave my revocation from this unpleasant and painful toil. I assure you I would not wish to be one of Homer's gods, if I thought I should be Minos, *Æacus*, or Rhadamanthus; I had rather be one of the least shades in the Elysian fields¹."

Among the memoranda of Lord Cromwell in his handwriting,

¹ Lord Coke, in his *Commentary on Magna Charta*, writes: "The philosophical poet doth notably describe the damnable and damned proceedings of the Judge of Hell:

Gnossius hic Rhadamanthus habet durissima regna,
Castigatque auditque reos, cogitque fateri.

First he punisheth, then he heareth, and, lastly, compelleth to confess." Nevertheless Coke, by his authority and his presence, sanctioned as prerogative, what he so strenuously denounces as contrary to law, justice, and humanity.

among the Cotton MSS. in the British Museum, is an entry, "Item, to send Glendon to the Tower to be *rakkyd*, and to send Mr Bellasys, Mr Lee, and Mr Osler there to assist Mr Lieutenant in the examination."

It appears, from Constantyne's memorial, in the *Archæologia*, that it was a common saying in the Tower, that Mark Smeaton, an alleged accomplice of Anne Boleyn, was "grievously racked." In a letter from Sir John Gage to the infamous Rich, it is stated of one of the alleged accomplices of Catherine Howard: "Dampert confesseth this now, but would not do it before, for any torture that he could be put to." Lord Cromwell, in writing to the King concerning a certain Monk, expresses himself: "We cannot as yet get the pith of his credence, whereby I am advised, to-morrow, to go to the Tower, and see him set in the *bracks*, and by torment compelled to confess the truth." The Duke of Norfolk writes to Lord Cromwell concerning the torturing of a Friar, after sentence had been passed upon him for a constructive denial of the King's titles, "My lord, the cause of my sending in so great haste is, because that if the King's Majesty or you shall think it convenient to have him brought to the Tower, there to be *more straitly put to the torture*, you may despatch this bearer, or some other with commandments to the Sheriff accordingly, so that the same may be with him at Norwich by Friday before ten o'clock."

It was in the reign of Henry VIII. that the most ruthless torturing that, probably, was ever practised in an English prison occurred, of which an account is given by the sufferer, Anne Ascue: "They did put me on the rack because I confessed no ladies or gentlemen to be of my opinion, and thereupon they kept me a long time. And because I lay still and did not cry, the Lord Chancellor and Master Rich took pains to rack me, *with their own hands*, till I was nigh dead." And it was in this same reign of Henry VIII. that was invented a new instrument of torture, called, from the name of Sir William Skevington,

Lientenant of the Tower, *Skevington's Daughters*, and, in later times, known by the dreaded appellation of the *Scavenger's Daughters*. The following description of this instrument is furnished by Mr Jardine, in his tract upon *Torture*:

“Principia torturæ post equuleum Anglis species est, Filia Scavengeri dicta, priori omnino opposita. Cum enim ille membra, alligatis extractisque in diversa manuum pedumque articulis, ab invicem distrahat; hæc, e contra illa violenter in unum veluti globum colligat et constipat. Trifariam hic corpus complicatur, cruribus ad femora, femoribus ad ventrem appressis, atque ita arcubus ferreis duobus includitur, quorum extrema dum ad se invicem labore carnificum in circulum coguntur, corpus interim miseri inclusum informi compressione pene eliditur. Immane prorsus et dirius Equuleo cruciamentum; cuius immanitate corpus totum ita arctatur, ut aliis ex eo sanguis extremis manibus et pedibus exsudet, aliis ruptâ pectoris crate, copiosus e naribus fauibusque sanguis effundatur.”—Tanner's *Societas Europæa*.

In referring to Mr Jardine's book, it may be observed, that he fully establishes a constant practice of torture by the King and his Council for many reigns; and, that, although unsanctioned by the Common Law, the infliction of it was not questioned by any Court, but was recognized as a flower of the prerogative, which stood above the reach of the tribunals of the country. He regards this practice as a very remarkable instance of the existence of a power above the law, controlling and subverting it. This author, who is particularly conversant with the State Trials, and the State Papers connected with them, is of opinion that the habitual application of torture rendered “the trial by Jury a mockery and a farce.”

It is conceived that there is weight in an intimation of Lord Bacon, that, in cases of treason, torture was used rather for examination than for evidence. For why employ the rack to extort evidence which might be fabricated, without any means of detection, with a pen? Plots might sometimes be disclosed

under a process such as that to which Bacon was privy, in Peacham's case, of examinations *before torture, in torture, between torture, and after torture*; but, it is conceived that confessions and depositions would, in general, have been concocted in a shorter and surer mode than that of a faithful transcript from the lips of a prisoner rolled up into a globe (*in unum veluti globum*) by Skevington's Daughters¹.

¹ The practice of *moral torture* seems to have been as familiar to Henry's agents as that of the rack, particularly for the purpose of extorting confessions, and pleas of guilty so erroneously assumed by some to have been conclusive of guilt. Cranmer, Norfolk, and Fitzwilliam were notorious adepts in this vile art. There is extant a proof, under Norfolk's own hand, of how little value was his promise when made to an alleged traitor: the Duke wrote to the King, that "he would esteem no promise that he would make to the rebels, nor think his honour touched in the breach of the same."

CHAPTER XII.

LOCAL IMPROVEMENTS.

THE Laws of the Reformation Parliament respecting Local Improvements indicate an advance in the civilization of the country. This Parliament was not slack in contributing to that progress, by surmounting obstacles occasioned through the elements, in restitutions made expedient by the delays of time, and in facilitating communications that were yet imperfect even between adjacent counties. The means adopted for such local improvements were, generally, efficient; but they, occasionally, evince a disregard of private rights and public liberty. The Preambles of the statutes on this subject recount several matters of antiquarian interest.

The Statutes passed by the Reformation Parliament on this subject, relate to (1) Bridges, (2) Sewers, (3) Gaols, (4) Buildings, (5) Paving, (6) Harbours, (7) Highways, (8) Rivers.

(1) *Bridges.*

Bridges were regulated, for many centuries, by a law made in the second session of this Parliament, during the Chancellorship of Sir Thomas More, vestiges of which remain in the present day. Magna Charta contains a clause respecting bridges calculated to prevent their compulsory erection, viz. "Nulla villa, nec liber homo distingatur facere pontes, aut riparias, nisi qui ab antiquo, et de jure facere consueverunt tempore Henrici Regis avi nostri." A deficiency of bridges through several reigns prior to that of Henry VIII. was often the cause or pretext, in civil actions, of defaults being saved, and delays permitted, on account of the increase of waters, *per cretance del eve.*

The statute on the subject of bridges passed in this Parliament has no Preamble: by its provisions, that Proteus, the Common Law, was faster chained down, and facilities were furnished for enforcing repairs, particularly in the cases of bridges, said to be numerous, that were in a dilapidated condition by reason that no person could be proved liable to repair them, this Parliament abhorring a vacuum of liability.

The statute is remarkable for having been selected by Lord Coke for the subject of an elaborate commentary in his second Institute, wherein he divides it into eight branches, upon each of which he discourses. He concludes this commentary by noticing, that the repair of bridges was materially promoted by a statute of Elizabeth authorizing Commissioners to inquire touching the misemployment of charitable funds, their repair holding a place among the current charities of the period, viz. "Relief of aged, impotent, and poor people; maintenance of sick and maimed soldiers and mariners; free-schools, and scholars of Universities; *repair of bridges*, ports, havens, causeys, churches, sea-banks, highways; education and preferment of orphans; houses of correction; marriages of poor maids; help of young tradesmen; relief or redemption of prisoners and captives; ease of poor inhabitants concerning payment of fifteenths, setting out of soldiers, and other taxes." Upon inquiries touching liability to repair bridges, evidence is sometimes procurable that a bridge has been built of *alms*, although the founder, on the system of the Man of Ross, has not marked the stone, brick, or wood with his name¹.

(2) *Sewers.*

The statute of the Reformation Parliament concerning Sewers has been the basis of legislation on the subject down to the pre-

¹ Such evidence was recently adduced on a trial as to the point whether the county of Nottingham or Sir R. Sutton was bound to repair a bridge over the Trent. The cause was tried three times, and the bridge acquired, in the neighbourhood, the name of the *lawyer's bridge*.

sent day. That statute, like the one respecting bridges, has the rare merit of containing permanent enactments on matters of general utility; it was passed during the Chancellorship of Sir Thomas More. Lord Coke, in his fourth Institute, has a chapter on the "Court of the Commissioners of Sewers." A well-known *reading* upon the statute was published by Serjeant Callis, of the date A.D. 1622. In the *Law Review* has recently appeared another *reading* upon this statute by John Herne of the date A.D. 1638.

The Preamble of the Statute of Sewers indicates, as might be conjectured, that this law emanated from the Government; it is as follows: "Our Sovereign Lord the King, like a virtuous and most gracious Prince nothing earthly so highly weighing the advancement of the common profit, wealth and commodity, of this realm, and considering the daily great damages and losses which have happened in divers parts of his realm, as well by reason of the outrageous flowing, surges, and course of the sea in and upon marsh grounds and other low places heretofore, through politic wisdom, won and made profitable for the great commonwealth of this realm; as also by occasion of land waters, and other outrageous springs in and upon meadows, pastures, and other low grounds adjoining to rivers, floods, and other watercourses. And, over that by and through mills, mill-dammes, weres, fissegarths, kidels¹, gores, gootes, floodgates, locks, and other impediments in and upon the said rivers and other waters, to the inestimable damage of the commonwealth of this realm, which daily is likely more and more to increase unless speedy remedy be provided; wherein albeit that divers and many provisions have been before this time made and

¹ Omnes Kidelli deponantur de cætero penitis per Tenisiam, et Medwayam, et per totam Angliam, nisi per costeram maris." *Magna Charta*. Barrington mentions that the Archbishops of Canterbury, who probably had *kidels* for the catching of fish, prevented this chapter of *Magna Charta* from being put in execution.

ordained, yet none of them are a sufficient remedy for reformation of the premises."

The operation of the Statute of Sewers, and its arbitrary character, may be collected from the following passage in Herne's reading¹:

"The common law gives power, but *ad distingendum* the parties, *per quantitatem terrarum sive pro numero acrarum sive per corneata pro rata portione terrenæ suæ*, to repair and amend those defects that shall be found and presented before the commissioners. But that by this statute gives power—(1st) to tax and assess; (2nd) to prostrate and overthrow mills, locks, wears, and other impediments; (3) to depute officers for the reparations to be made, and collectors for the receiving and laying out of the money that shall be levied and paid; (4th) to punish the debtors and detainers by fines; (5th) to arrest the horses of other men, and likewise *labourers*, to do the work; (6th) to take timber and other necessaries upon other men's grounds and inheritances; (7th) to make laws and decrees, thereby to grant and decree away other men's inheritances and estates, beside many other particulars obvious to him that shall well peruse this statute; and which hereafter I shall have occasion to discover. So as from the premises, I may well conclude the differences between the common law and this statute law to be the same as between a prince and a tyrant. The common law, which is a law of mercy, like a lawful and merciful prince, looks only after *capita rerum*, the great offences, and extends power and punishment for repressing gross and exorbitant enormities only; but this statute, as a tyrant, goes down with all, without sparing the least offence or offender, not only to amend a seawall or a bridge, but also to pull down and overthrow mills and

¹ A summary of the previous and subsequent statutes of sewers is given by Dugdale, in his treatise on *Embankment*, Ch. LIII. Dugdale is of opinion that "before the dissolution of the Monasteries, the passages for water were kept with cleansing, and the banks with better repair, chiefly through the care and cost of those religious houses."

stankes, yea, and the least impediment and annoyance; not only to distrain the parties, but 1st, to arrest; 2nd, to fine; 3rd, to imprison; 4th, to decree from him his estate and inheritance; and yet, herein appears the wisdom of the Parliament in setting up one tyrant against another; for what more tyrannous and more unmerciful than the sea and inundations of water? which made the prophet David, when he complained of the cruelty and unmercifulness of his enemies that sought his life, to use this metaphor, 'That the rivers had gone over his head, and great waters had overwhelmed him;' and, therefore, an element fit to be repressed and restrained to his own proper bounds and limits, by all the trials that the wit and industry of man can possibly invent. To which end this statute was made."

Blackstone notices that in the reign of James I. the King's Council took upon them to order, that no action or complaint should be prosecuted against the Commissioners of Sewers, unless before themselves, and committed several to prison who had brought such actions at Common Law; and that one of the reasons for discharging Coke from his office of Lord Chief Justice was for countenancing these legal proceedinga. Coke, however, was impressed with the utility of a law of Sewers; for, in a chapter of his third Institute, with regard to the offence of cutting or breaking the Powdike, in Marshland, he writes, "The sea is such an *immense creature*, that, who can withstand it, without length of time, infinite damage and loss, and extreme charge and cost?"

The condition of fen-lands "won, by politic wisdom" from the sea, seems, at the period of this statute, to have justified the expediency of many provisions of Henry's *Law of Sewers*. There was a law of Henry VIII. for obliging Archbishops and Dukes to keep seven stoned trotting horses for the saddle, each of which was to be fourteen hands high, at the age of three years, with like provisions for other classes, including such of whom the wives wore French hoods or velvet bonnets; which law was

modified by a statute of Elizabeth, whereby the Isle of Ely and Cambridgeshire were exempted "on account of their rottenness, unfirmness, moisture, and waterishness, whereby they were not able to breed or bear horses of such a size." Henry VIII., in his answer to the Lincolnshire petitioners, called their *shire* "one of the most brute and beastly of the whole realm."

The following letter, in Ellis's *Collections*, may raise a suspicion that the Act of Sewers could not always be effectually enforced against the rich and powerful, and may afford some excuse for the arbitrary nature of several of its provisions:

"Master Stedalf, always my duty considered, I am bold to write unto you, as to one of the King's Commissioners of Sewers, of the extreme handling of divers poor men, whereof I am one myself. Sir, if it will please you to call to remembrance how Mr Cromwell, one of the King's most honourable Council, came into Suthwark and brought with him the King's Commission concerning the Statute of Sewers, under the King's broad seal, by virtue whereof he called personally before him Mr Skate and me, with many other divers honest gentlemen and substantial men, and gave us our charge wisely and substantially, and swore us. At which time, like a noble counsellor, he comforted us, and bade us fear no man, but only God and our Prince, and he would see us take no wrong of no man. And as concerning any matter that was comprehended in our charge, we should begin with our Prince indifferently, as we would do with all other, the meanest men."

It is then stated in the letter, that the Dean of Kingston had erected a *steyre* on the Thames which encroached far above the steyres of other men, whereby divers bargemen complained that their barges were put in jeopardy. "But to frighten us, the Dean said we be false harlots, and that he would bring the King himself to prove what false harlots we be;" that the Dean "came to my cheef house, Rabeton Hall, and showed no authority, but, like an *Emperor*, enters into my ground bordered about

with elms, the chief pleasure of all my house, and hath plucked, overthrown, and digged up the roots of thirty five of my purest and fairest elms that he and his workmen could find. I am a poor man, yet, notwithstanding my poverty, I would rather have given thirty five nobles, and, if I were rich, rather to have lost thirty five pounds."

(3) *Gaols.*

A Roman satirist reverts with admiration to purer times when Rome had only one prison, *uno contentam carcere Romam*. It was, probably, less from an increased depravity of manners, than from an inordinate multitude of newly created crimes, and offences punishable with imprisonment, that the Reformation Parliament judged it necessary to increase the number of *gaols*. It gave power to Justices of the Peace to erect gaols wherever they thought proper, and to tax inhabitants for the expences of building and repairing them. Lord Coke informs us, that by a Statute of Edward III. "gaols were to be repaired at the King's charge;" but that was when England was *contented* with a few gaols: the victims of a sterner policy were to be a charge upon the people. Lord Coke, however, observes that this Act "had small effect; for Justices of the Peace did little or nothing within the time to them prescribed."

Hume infers, from a statute passed in the third year of the reign, that, at this period, the prisoners in the kingdom for debt and crimes exceeded, in number, sixty thousand persons. The statute is obscure, and may contain a clerical error; but, it is conceived, that it may be construed, without a violation of its letter, and more agreeably to its scope and context, as speaking of sixty thousand, not prisoners, but hat-makers, whose numbers the promoters of the Act were interested in exaggerating. The passage in question is as follows: "Where by the workers and makers of caps and hats within this realm of England have daily occupied and set on work in making caps and hats of the King's

natural subjects, that is to say men women maidens and children born within this realm of England to the great relief and comfort of poor *prisoners* within this realm to the number of three score thousand persons and above in carding, spinning, stitching knitting thickening dressing dyeing shearing and pressing with other certain feats concerning the making and working of caps and hats made and wrought within the city of London, and divers and many others cities, boroughs and towns within this realm."

It was, however, probably, very true that there was an insufficiency of gaols; a circumstance which would have much aggravated the discomforts of prisoners. This crowding of them, especially at times of the plague, in conjunction with a multitude of other prison miseries, must be borne in mind when adverting to new punishments of imprisonment inflicted by this Parliament, several of which were to last during the King's pleasure. Regarding the temper of the Sovereign, and the slow growth of humanity in such matters among us, the imprisonments enacted by the Reformation Parliament will not be judged of according to the state of prisons in the present day. In pre-Howard times, imprisonment was not mitigated by the sedulity of philanthropists, but was miserably dragged out in dungeons of *little ease*.

(4) *Buildings.*

The re-edifying of *buildings* which had been consumed by a fire at Norwich was the subject of a particular statute; by another statute provision was made for re-edifying buildings at Lynn which occasioned the town to be inundated by the sea; and, by a third, the general restoration of ruined buildings in seven provincial towns was directed. These statutes, most probably, contributed to the improvement and adornment of the places to which they relate; it will not be inconsistent with the tenor of the statutes of the reign, if they savour of the arbitrary. They furnish some matters of interest to the antiquarian.

In the statute relating to the City of Norwich it is recited, that, "where, by unfortunate chance of fire, a great number of houses of habitation within the *City of Norwich*, about twenty six years past, were burned and utterly consumed, to the great heaviness, discomfort, loss, and hinderance of the inhabitants of the same City; by reason of which burning divers and many void grounds, whereupon, before the same fire, good and substantial houses of habitation were standing, remained, at this day, un-re-edified, and not only un-re-edified, but, also, do lie as desolate and vacant grounds, many of them nigh adjoining the King's high streets, replenished with much uncleanness and filth, to the great nuisance of the said inhabitants and other the King's subjects passing by the same."

It was enacted, that if the owners did not, within two years after proclamation by the Mayor, re-edify, or inclose with walls of mortar and stone, the vacant grounds, the Corporation of the City might take and retain the grounds "clearly discharged of all rents as well against the Lords of fees thereof as of all other." On default of the Corporation for two years, the grounds were to revert to the original owners.

By a Proviso, probably inserted in the House of Lords, a modification of the above clause is introduced, viz. that on failure of the owners to repair and amend within two years "it shall be lawful to the chief Lords of whom such vacant grounds be or shall be holden, to enter and have the same grounds to them and their heirs and successors for ever." On the default of the Lords for *one* year, the Corporation might enter according to the former clause.

The Statute relating to Lynn commences with a recital, that "Humbly beseecheth your good and gracious Highness your obedient subjects the Mayor and Burgesses of the *Town of Lynn Bishop* in the County of Norfolk, that where, at this present time, divers and many messuages and tenements of old time built in the same town, are, and, for a long time, have been in

great decay and desolation ; whereby the flood and rage of the sea coming to the said town, and insurging upon such decayed tenements, in times of tempest, doth fret, and marvellously wear in divers places of the said town, to the great hurt and damage as well of the said town, as of divers persons having grounds adjoining to such places so in decay. And that the owners of such decayed grounds will not re-edify and maintain the said messuages and tenements so decayed for the maintenance and defence of the water and rage of the sea, whereby the said town is likely to fall into more decay, ruin, and desolation, if remedy thereof be not provided."

It was, therefore, enacted; in a somewhat like manner as in the case of the City of Norwich, that the owners were to have one year to rebuild ; on their default, the chief Lords another year ; and, on their default, the Corporation two years ; and, on their default, the grounds were to revert to their original owners.

The recital of the statute for beautifying the seven towns, is, "Forasmuch as divers and many houses, messuages, and tenements of habitations in the towns of *Nottingham, Shrewsbury, Ludlow, Bridgnorth, Queenborough, Northampton and Gloucester* now are and of long time have been in great ruin and decay, and specially in the principal and chief streets there being, in the which chief streets *in times past* have been *beautiful* dwelling houses there well inhabited, which, at this day, much part thereof is desolate and void grounds, with pits, cellars, and vaults lying open and uncovered, very perilous for people to go by in the night without jeopardy of life, which decays are to the great impoverishing and hindrance of the same towns."

It was, therefore, enacted that if owners, within three years after proclamation made by the officers of towns, did not "re-edify and build the same decayed houses and void grounds, it shall be lawful to the Lords of whom such vacant grounds or decayed houses be or shall be holden, to enter immediately after the said three years expired, and to have the same grounds, to them and

their heirs or successors for ever; so that the said Lords do sufficiently re-edify and build the same vacant and void grounds within the following three years." On default of the Lords, the Mayors or other chief officers of towns, might enter upon and hold such void and decayed grounds and houses, to them and their successors, for ever "clearly discharged of all rents, as well against the Lords of whom such grounds be holden, as all others." On default of the Mayors for three years, the original owners were to re-enter and retain the grounds and houses.

Assuming that, in the above instances, public safety, and not merely public beauty, imperatively demanded the removal of a nuisance, it may yet be open to inquire whether the process of cyclical forfeiture prescribed in the Acts on the subject was as consistent with a due regard to the rights of property, as it was simple and effective. The Parliament appears to have been satisfied with *one* cycle of forfeitures.

The allusions to *Chief Lords* appear to throw light on the origin of towns, and the *burgesses* of Domesday Book. The tradesmen of towns would seem to have had their patrons, under whose protection they traded, and on the sites of whose demesnes the towns were built, paying rents both for their privileges and residences.

The decay of seven towns mentioned in the last of the above Acts corresponds with a statement in a statute passed in the beginning of Henry's reign for repealing a law of Edward II. prohibiting magistrates who, by their office, ought to keep the assize of provisions, from selling, during the continuance of their magistracy, any wine or victuals; the reason assigned for the repeal is, that "since the making of the statute of Edward II., many and the most parts of all the cities, boroughs, and towns corporate within the realm of England, have fallen into ruin and decay, and are not inhabited by merchants, and men of such substance as at the time of making that statute. For, at this day, the dwellers and inhabitants of the same cities and boroughs,

are commonly bakers, vintners, fishmongers, and other victuallers, and there remain few others to bear the offices." The decay of provincial towns at this period has been variously accounted for: a stricter police in country parts may have induced men of landed property to quit their town houses; the diminution of the rural population consequent on the decay of the feudal system may have withdrawn customers from the shops of neighbouring towns.

(5) *Paving.*

The *paving* of streets of London was the subject of legislation by the Reformation Parliament, whose measures of improvement were particularly directed to the great avenues of the Strand and of Holborn. In the Strand Paving Act, it is recited that "In most humble wise show and beseech your Highness your poor subjects the inhabitants dwelling in the parishes of St Martin in the field next Charing Cross, our Lady at Strande, and St Clement Danes without Temple Bar. That, where the common highway between *Charing Cross* aforesaid, and the *Strande Cross* is very noyous and foul, and, in many places thereof, very jeopardous to all your liege people that way passing and repassing, as well on horseback as on foot, both in winter and in summer, by night and by day. The very occasion thereof hath been and yet is that the landlords and owners of all the lands and tenements next adjoining on both sides of the said common highway, be, and have been, remiss and negligent, and, also, refuse, and will not make and support the said highway with paving, every of them after the portion of his ground adjoining to the same highway. And, forasmuch, most gracious Sovereign Lord, as the said highway hath been of continuance greatly occupied as well with your subjects, and their carts and carriages to and from your City of London, from divers parts of this your realm, as with your subjects passing and repassing to and from your town of Westminster *about the needs of your laws there kept*

in the term season¹, which way, if it were sufficiently paved, and made after the manner of the pavement of the street between the Strand and Temple Bar, it should not only be a great comfort to all your subjects thereabout dwelling, but also to all other your liege people that way passing and repassing."

It was, thereupon, enacted that the landowners on each side of the way should, under a penalty of 6d. per square foot omitted, pave the way to the middle "in such form as the highway between Strand Cross and Temple Bar is paved."

In the Holborn Paving Act it is thus recited, "Complaineth to your Highness and to your High Court of Parliament not lonely your subjects and inhabitants within the street of Holborne, but also all the poor carriers and other your subjects, being common travellers, repairing weekly and monthly to your City of London. That, where, the said street being the common passage for all carriages carried from west and norwest parts of the realm, was, of late time, so well and substantially paved, that your subjects had good and secure passage through the said street, till now, of late, for lack of renewing of the said paving by the landlords which dwell not within the city, the way is so noyous and so full of sloughs and other incumbrances, that, oftentimes, many of your subjects riding through the said street be in jeopardy of hurt, and have almost perished."

It was, thereupon, enacted, that the owners of land on both sides of the said street, between Holborne Bridge and the *barres* at the west end of the said street, should pave the street adjacent

¹ Fortescue describes the Temple as conveniently situated, in a private place, between the city of London, and the King's Palace at Westminster where the Courts of Law were held. In a ballad on the pulling down of Charing Cross, which stood in the village of Charing, the want of it is supposed to have perplexed the lawyers.

At the top of the Strand

They make a stand,

Saying, "We must go by Charing Cross."

Strand Cross stood near Somerset House (8 Arch.) In a picture of the Coronation of Edward VI. there are only a few buildings sparingly erected on the present site of the Strand. These crosses were gilt.

to their respective lands, under a penalty to the king of 6*d.* per yard square of unpaved street.

Occasion was taken of enabling the Mayor and Aldermen, to inquire of landowners not paving streets adjacent to their lands anywhere within the City or its suburbs, or, in Southwark, so far as the jurisdiction of the City reached; and to assess fines, in addition to the penalties of the Act, "by their *discretions*; the said fines to be certified into the King's Exchequer."

These Paving Acts have been long superseded; but they are interesting in an antiquarian point of view, and as marking an increase of traffic and intercourse in the metropolis. The principle of making the owners of lands abutting on streets solely liable for the making and repair of pavements may not appear equitable; it was, probably, the most simple and effectual rule that occurred to the legislature.

(6) *Harbours.*

Several harbours in the West of England gave occasion to legislation by this Parliament. Their ancient capacity, and the means whereby they had been rendered less navigable to a remarkable extent, are matters of curiosity. The power of the Stannary Court indicated by the statute on this subject is connected with some important incidents of constitutional history. The preamble of the statute is as follows. "Piteously sheweth unto the King and the Lords spiritual and temporal the inhabitants of the towns and ports of Plymouth, Dartmouth, and Teignmouth, that where the said ports have been, in time past, the principal and most commodious havens and ports within this realm for the road, surety, and preservation of ships resorting from all places in the world, as well in peril of storms as otherwise. For where, before this time, ships being under the portage of eight hundred tons resorting unto any of the said ports or havens, might, at the low water, easily enter into the same, and there lie in surety, what wind or tempest soever did

blow, by reason whereof not only a great multitude of ships, as well of this realm as of other countries before this time have been preserved and saved, but, also, in time of war, the said havens and ports have been the greatest fortification and defence of that part of this realm, and the special preservation of the great part of the navy of the same. Which said ports and havens be, at this present time, utterly decayed and destroyed by means of certain Tin-works, called stream-works, used by certain persons, which more regarding their own private lucre, than the commonwealth, and surety of this realm, have by working of the said stream-works, digging, searching, and washing of the same near unto the fresh rivers, waters, and low places, descending and coming out of the lands towards and into the said ports and havens to the sea, conveyed by the force of the said fresh rivers a marvellous great quantity of sand, gravel, stone, rubble, earth, slime, and filth into the said ports and havens, and have so filled and choaked the same, that, where, before this time, a ship of the portage of eight hundred tons might have easily entered at low water into the same, now a ship of a hundred tons can scarcely enter at the half flood."

It was enacted that a penalty of ten pounds should be imposed on every person digging or washing tin in the manner complained of. And it was provided that if any person was "sued, accused, indicted, imprisoned, amerced, or otherwise vexed or troubled in his person, lands, tin-works, goods and chattels for pursuing or attempting any suit according to the provisions of the statute, by any of the ministers or officers of the King's Court of Stannary, or other persons," he might recover treble damages; and, if he was imprisoned, he was to be discharged by a Justice of the Peace¹.

The famous Act, called Strode's Act, passed in the 4th year

¹ In Hale, *De Portibus Maris*, is a collection of all the Statutes passed with reference to particular ports. Seven Statutes were passed on the subject in the reign of Henry VIII.

of Henry VIII., related to the imprisonment, by the Stannary Court, of a Member of the Lower House, on account of having introduced Bills "against certain persons, named tinners, for the reformation of the perishing, hurting and destroying of divers ports, havens and creeks." The proceedings in the Stannary Court against Strode were vacated, and it was enacted that "all suits, accusements, condemnations, executions, fines, amerciaments, punishments, corrections, grants, charges and impositions, put or had, or hereafter to be put or had unto or upon the said Richard Strode, and to every other the person or persons that now be of this present Parliament, or of any Parliament hereafter that shall be, for any bill, speaking, reasoning, or declaring of any matter or matters concerning the Parliament to be communed or treated of, be utterly void and of none effect. And, over that, be it enacted that if the said Richard Strode, or any of all the said person or persons, hereafter be vexed, troubled, or otherwise charged for any causes as is aforesaid, that then he or they, and every of them so vexed or troubled, of and for the same, to have an action upon the case against every such person or persons so vexing or troubling any contrary to this ordinance and provision, in the which action the party grieved shall recover treble damages and costs."

Strode's Act and the arbitrary proceedings of the Stannary Court became matters of great public moment at a subsequent period of history; it may be important to notice, in this place, that they receive illustration from this Act of the Reformation Parliament touching havens. Its peculiar reference to the Court of Stannary, which had imprisoned Strode, shews the existence of a power with which the Parliament was afraid to cope, unless indirectly and inadequately, by awarding, as in Strode's case, *treble damages*.

(7) *Highways.*

The state of highways in Sussex engaged the attention of this Parliament, as that of the highways in the Weald of Kent

had been legislated for earlier in the reign. The general repair of highways was not effected till the reign of Philip and Mary; the enactment of this Parliament seems to have reference to what, in modern times, is known as the turning of roads. That the Weald of Kent, and the County of Sussex should have been selected for improvement, may be suspected to have been for personal rather than local reasons, unless the roads in those localities were, beyond all other places in England, *noyous*.

In the earlier Statute it was recited that many common ways in the Weald of Kent were noyous by wearing and course of water; and it was enacted that if any person, of his *good mind and disposition*, without any value of good by him received for the same, will, for the common weal of the King's people, lay out a way over his lands which two Justices, with a Jury, should deem more commodious than an old way, the new way might be substituted for the old one; the right of the soil of the old way passing to the maker of the new one. By the statute of the Reformation Parliament, the former Act, which was confined to the Weald of Kent, was extended to every part of the County of Sussex.

(8) *Rivers.*

The Severn, Ouse, and Humber are the subjects of special provisions in this Parliament: but the state of the Thames was, in the reign of Henry VIII., as in the present day, an object of particular solicitude. In an Act passed for the Conservation of the Thames, it is recited, that "Where before this time the River of Thamys, among all other rivers within this realm hath been accepted and taken, and as it is, in deed, most commodious and profitable to all the King's subjects, and chiefly, of all other, frequented and used as well by the King's Highness, his Estates, and Nobles, Merchants, and others repairing to the City of London, and other places, shires, and counties adjoining the same. Which River of Thamys is, and hath been, most meet and

convenient of all other, for the safeguard and ordering of the King's *Navy*, conveyance of merchandizes, and other necessaries to and for the King's most honourable *household*, and otherwise to the great relief and comfort of all persons within this realm. Till now, of late, divers evil disposed persons partly by misordering of the said river by casting in of dung and other filth laid nigh the banks of the said river, digging and undermining the banks and walls next adjoining the said river, carrying and conveying away of *wayshides*, shores, piles, boards, timber, ballast for ships and other things from the said banks and walls in sundry places; by reason whereof great *shelpes* (*shelves*, Shak.?) and risings have, of late, been made and grown in the fareway of the said river; and such grounds as lie within the level of the said water-mark by occasion thereof been surrounded and overflowed by the *rage* of the said water, and many great breaches have ensued and followed thereupon, and daily are like to do, and the said *River Thames to be utterly destroyed for ever.*"

It was enacted thereupon, that divers specified nuisances to the Thames should be prohibited under penalties, among which offences is the "doing or procuring any thing to be done in the annoying of the stream of the River Thamys, making of *shelpes* by any manner of means by mining, digging, casting of dung, rubbish or *other thing* in the same river." The officer for the ballasting of ships might be compelled to take parcel of the ballast from the gravel and sand of the *shelpes* between Greenwich and Richmond; this was the part of the river most traversed by the royal barge. Lord Coke mentions an obsolete species of offence, which consisted in "casting any corrupt thing *appoisoning* the water in, or about London." He writes that its name was compounded of two words, *lour*, signifying corruption, and *laron*, a felon, whence it was called *Lourgulary* or *Lourglary*.

CHAPTER XIII.

CROSS-BOWS AND HAND-GUNS.

THE disarming Act of Henry VIII. on the subject of cross-bows and hand-guns throws light upon the manners and political condition of the people, and on the progress of invention in weapons for war or sport. This Act has no preamble, further than a recital that former statutes on the subject had been ineffectual. By a previous statute of this reign, the reasons for prohibiting the general use of cross-bows were recited to be, that the King's subjects "daily delighted themselves in shooting of cross-bows, whereby shooting of *long-bows* is the less used; and that many and divers, not fearing the penalties of the statutes, use daily to shoot in cross-bows and hand-guns, whereby the King's deer, and those of other lords are destroyed and shall be daily more and more."

It was enacted that none should use, or keep in their houses, any cross-bow or hand-gun, unless they were possessed of an income of £100 a year, under a penalty, for every offence, of £10, which was not to be mitigated. Qualified persons were empowered to seize the cross-bows and hand-guns of the unqualified. All *former licenses* were repealed, but the King was expressly authorised to grant *new licenses*¹.

In despite of numerous archery laws, parish butts, parliamentary bows and arrows, prohibitions of *importune* games, the long-bow was going out of fashion. In a statute of the 3rd of this reign, it is recited, that "shooting in long-bows is right little used, but daily minisheth, decayeth, and abateth more and

¹ By the 6th Hen. VIII. Ch. xiii. the offence of shooting with cross-bows by unqualified persons was cognizable "before the King's Council by examination as before a Justice of the Peace by examination or presentment;" the qualification was 300 marks.

more." The disuse of archery, and peril of the King's deer, had been lamented in a statute of Henry VII., which recited, that shooting with the long-bow is "now greatly decayed in this realm, forasmuch as now, of late, the King's subjects greatly delight themselves, and take pleasure in using of *cross-bows*, whereby great destruction of the *King's deer*, as well in forests, chases, as in parks is daily had and done; and shooting in long-bows little or nothing used, and likely, in short space to be lost and utterly decayed, to the great hurt and enfeebling of this realm, and comfort of our outward enemies."

On the first formation of the *Yeomen of the Guard*, in 1485, half of them were armed with bows and arrows, and the other half with *arquebuses*¹. Henry VIII., when he invaded France, carried with him great pieces of ordnance, among which were twelve of extraordinary size, that were called the *Twelve Apostles*. At a *muster*, ordered by Henry VIII. of the City of London, there is mention, by Hall, of the great and light *ordnance*, with *stone* and powder, a *forest of pikes*, besides *bow-men*, and *bill-men*; it is related that the *gunners*, four in a rank, shot in divers places "very cheerfully."

As an illustration of the privileged use of cross-bows by the young nobility, it may be mentioned that, in this reign, the Earl of Surrey and some of his companions were charged before the Star Chamber with walking about the streets of London at night time, breaking the windows of the houses with stones shot from *cross-bows*. Earl Surrey pleaded, in excuse, that he had not committed the offence from levity, but from a religious motive. For having observed the sinful and licentious habits of the citizens, and that the remonstrances of their spi-

¹ See history of hand-fire-arms by Mr Meyrick, in the 22nd Vol. of the *Archæologia*. Also a paper in the *Archæologia*, Vol. XXX., on the discovery of *stone* shot in the Tower ditch; they were thirty in number, and were supposed to have been fired against the Tower and to have rebounded from its walls in the reign of Henry VI. So late as the year 1643 the Earl of Essex raised a company of archers for the service of the Parliament.

ritual pastors had been addressed to them in vain, he said, "I went at midnight through the streets, and shot from my *cross-bow* at their windows, that the stones passing noiseless through the air and breaking in suddenly upon their guilty secrecy, might remind them of the suddenness of that punishment which the scriptures tell us divine justice will inflict on impenitent sinners, and so lead them to reformation."

In order to estimate the motive of discountenancing the cross-bow in favour of the long-bow it is necessary to advert to the unceasing attempts of Henry to make every man in England an archer, whether from traditional policy, or because he was, during the greater part of his reign, meditating invasions of other countries, or provoking them against his own¹.

It has been suggested that Henry taught the common people archery, in order that they might co-operate with himself, in preventing the oppression of the upper classes; this reason may appear inadmissible on various grounds, and appears to be inconsistent with his confining to the use of the upper classes weapons so destructive as cross-bows and hand-guns, which, on account of their fatal operation, had been anathematized by a Council of the Church.

¹ In a characteristic clause occurring in the first charter of the Artillery Company (who were originally archers, the word *artillery* being anciently used in this sense) which was granted by Henry VIII., is an indemnification from the charge of murder, if any person passing between the archer and his mark was killed; provided the archer had first called out, "fast." Hall, in the Preface to his *Chronicles*, shews the common use of metaphors from archery, saying that a preceding chronicler, Fabian, was "worthy to be praised for his diligence, but far shooting wide from the *butt* of a history." Five statutes to enforce archery were passed in the first twenty years of Henry's reign.

CHAPTER XIV.

APPAREL.

SEVERAL Statutes were passed in the reign of Henry VIII. upon the subject of the Reformation of Apparel; one of them by the Reformation Parliament, in the twenty-fourth year of the reign. Lord Coke, in his third Institute, observes of the Statutes of Apparel, that many of them, “fight with, and *cuff* one another;” his list of these Statutes commences with the reign of Edward III., and includes six in number passed in the reign of Henry VIII. Lord Herbert remarks that these laws for the government of fashion, themselves *changed fashion*. It was not till the reign of James I. that Englishmen obtained liberty of apparel.

It is recited in the Preamble of a Statute in the twenty-fourth year of Hen. VIII., that, “Where, before this time divers statutes have been with great deliberation and advice devised for the necessary repressing, avoiding, and expelling of the inordinate excess *daily more and more used* in the sumptuous and costly array and apparel accustomably worn in this realm: whereof hath ensued and daily do chance such sundry high and notable inconveniences as be to the great manifest and notorious detriment to the commonwealth; the subversion of good and politic order, in knowledge and distinction of people according to estates, pre-eminencies, dignities and degrees; and to the utter impoverishment and rendering of many inexpert and light persons inclined to pride, the mother of all vices. Which good laws notwithstanding, the outrageous excess therein is rather from time to time *increased* than diminished, either by the occasion of the perverse and foward manners and usage of people, or for that errors and abuses once rooted and taken into

long custom be not facilely, and at once, without some moderation for a time, relinquished and reformed."

By the enacting clauses, dress was to depend on nobility, and, under the degree of Baron's sons, upon property, or property and station combined. Thus the only persons entitled to wear, or to apparel their horses or mules with certain prescribed dresses were, respectively, the King and royal family, Dukes, Marquises, Earls, Viscounts, the Prior of St John of Jerusalem, Barons, Knights, the sons of Barons or Knights, persons having a yearly income, out of freehold land, respectively, of £100, £40, £20, £5, serving men and yeomen dispending of freehold not less than forty shillings a year. Husbandmen and journeymen were to be the shabbiest of the community.

As in former statutes concerning apparel, there are descending scales of materials, colours, and prices. Thus, to certain classes were prohibited purple silk, cloth of gold of tissue, (royal insignia, but which Dukes and Marquises might wear in their doublets and sleeveless coats, but in no other parts of their garments, or of a price exceeding £5 the yard), tinselled satin, furs of sables; crimson, scarlet, violet and blue velvet or cloth, gold bracelets and chains of the weight of an ounce, embroidery, pricking, or printing with gold, silver, or silk, damask, chamlet, taffata, sarcent, aiglettes, buttons, broaches of gold or silver, gilt or counterfeit gilt. Persons not otherwise privileged, or having an income in land of the value of £5 a year were not to wear cloth of a value of above 6*s.* 8*d.* the broad yard. Yeomen or servants taking wages and not having 40*s.* a year in land were prohibited from wearing "any cloth in their hoses above the price of 2*s.* the yard; and that none of their hoses be garded or mixed with any other thing that may be seen on or through the upper part of their hosen, but with the self-same cloth only, nor in their gowns, coats, or jackets, or other garments, any cloth above the price of 3*s.* 4*d.* the broad yard, except it be a master's livery, nor fur, except it be grey

rabbit, black lamb, or white lamb; nor shall wear any shirt, or shirt-band, under or upper cap, coif, bonnet, or hat garnished, mixed, made, or wrought with silk, gold, or silver." Husbandmen were not to wear cloth in their hoses above the price of two shillings the yard, or, in their gowns, above the price of 4*s.* the yard, nor in their coats or jackets, above the price of 2*s. 8d.* the yard; nor in their doublets any other thing than is wrought within this realm, fustian and canvas only excepted, nor any manner of fur. Journeymen in handicrafts were not to wear in their hoses any cloth above the price of 16*d.* the yard, nor any cloth in their gowns, jackets, or coats above the price of 2*s. 8d.* the yard, nor in their doublets, any other thing than fustian, canvas, leather, or woollen cloth, nor any manner of fur in their apparel. The commercial policy of the age was consulted without doing violence to the fashions of the aristocracy, by making the privilege of wearing foreign materials or manufactures an appendage of exalted rank.

The Act contained exceptions and provisoës for wearing in bonnets chains of silver-gilt, or ungilt, as any may win by wrestling, shooting, running, leaping, or casting of the bar; and for masters of ships and mariners wearing *whistles* of silver, with chains of silver to hang the same upon; for the apparel of the Clergy, of Officers of State, Judges, Mayors and other public officers, Barristers, Students-at-Law, *Gentlemen* being servants to any Lord, Knight, Squire, or Gentleman whose master may dispend forty pounds a year, graduates in the Universities, soldiers, royal servants, Ambassadors, foreign noblemen not intending to make long *domore* in the Country, henchmen, heralds, minstrels, players in *interludes*, sights, revels, justes, turneis, barriers, solemn watches, or other martial feats or disguisings. Any person of the *degree* of a *Gentleman* might wear a shirt wrought or embroidered with silk only, so the same work or embroidery be made within this realm of England, Wales, Calais, Berwick, or the Marshes.

The penalty in the Act, from the prince to the peasant, was *3s. 4d. per diem*, and forfeiture of the prohibited raiment; the King was to receive half of the money and of the forfeited clothes.

With regard to the exception, in the Act, of players in *interludes*, it is to be observed that the same exception is to be found in the three previous Acts of Henry concerning apparel, the first of which was passed in the first year of his reign, A.D. 1509, the King, probably, wishing to dress his people to his taste as soon as he had the power. Mr Collier, in his *Annals of the Stage*, is of opinion that *interludes*, or pieces played in the intervals of entertainments, and neither miracle plays, nor moralities, were the invention of John Heywood, a player on the virginals, whose interludes were first published A.D. 1533, and who is supposed not to have begun to write them till 1529 or 1530. It would appear, from the Apparel Acts, that interludes were known earlier, or that the term was not confined to diversions of the nature invented by Heywood. In the 19th year of Henry's reign, the actors in a play were accustomed to wear costly apparel, as appears from the following paper of instructions given by Mr Collier from the original document:

"The kyngs plessyer was that at the sayd revells by clerks in the latyn tong schould be playd in hys hy presens a play, where of insewethe the naames. First an Orratur in apparell of golld: a Poyed [poet] in apparell of cloothe of golld: Relygyun, Ecclesia, Verritas, lyke iij nowessys [novices] in garments of syllke, and vayells of laun and sypers [cypress]: Errysy [Heresy] Falls-interprytacyun, Corupcyoscryptoris, lyke ladys of Beem [Bohemia?] inperelld in garments of syllke of dyvers kolours: the errytyke Lewter [Luther] lyke a party freer [friar] in russet damaske, and blake taffata: Lewter's wyef [wife] like a frow of Spyres in Allmayn, in red syllke: Peter, Poull and Jhames in iij abyghts [habits] of whyght sarsenet, and iij red mantells, and hers [hairs] of syllver of damaske, and pelyuns [pelerines?] of skarlet: a Kardynall in hys apparell: ij Sargents in ryche

apparell : the Dollfyn [Dauphin] and hys brother in koots [coats] of vellwett inbrowdyrd with golld, and kaps of saten bound with vellwet : a Messenger in tynsell saten : vj men in gouns of gren sarsenet : vj wemen in gouns of crymsyn sarsenet : War in ryche cloothe of golld and fethers and armd: iij Allmayns in apparell all kut and sclyt of syllke : Lady Pees [Peace] in layds [lady's] apparell all whyght and ryche, and Lady Quyetnes and Daam Tranquylte rychely besyen [beseen] in ladyes apparell."

In addition to these articles of attire were eight beards of gold, and six of silver, set on vizors, and the hire of hairs for the ladies¹.

In this and previous statutes of apparel, the degree of *Gentleman* is spoken of as well ascertained. Lord Coke, in his chapter on the Statute of Additions, says that there were Gentlemen by coat-armour, by office, and by reputation. Sir Thomas Smith divides all persons below the degree of knighthood into gentlemen, yeomen and *rascals*, writing, that, "as to their outward shew, a Gentleman must go like a Gentleman, a Yeoman like a Yeoman, and a Rascal like a Rascal." He ranks as gentlemen "all who study the laws of the realm, or are students in the universities, or profess liberal sciences, or can live idly without manual labour; and, if need be, a King of Heralds shall give such an one, for money, arms newly made and invented, the title whereof shall be pretended to have been found by the same herald in perusing of old registers. The appellation of *master* appertaineth to gentlemen only; yeomen to their surnames add *goodman*, as goodman White, goodman Brown." *Rascals*, according to Sir Thomas Smith, included labourers, husbandmen, artificers, *copyholders*, and such merchants,

¹ Plays were represented, in the reign of Henry VIII., in what had been the refectory of the priory of the Carmelites of Hitchin; they were written, and acted under the management of Mr Radcliffe, to whom Henry granted the dissolved priory: the king would thus appear to have provided himself with another attraction to *Hitchin*, besides what has been noticed in a former page, the "noble science" of hawking.

and tradesmen as had no *free* land. Sir Thomas Smith informs us, that it was only of late that such low and base persons had aspired to the office of constable¹.

This Act differs, in a few particulars, from the preceding Acts of the reign concerning apparel. In the first of those there is an exception of *women*; this exception, in an Act *in pari materia*, might fortify an argument, that, by the Act under review, women could be forced to dress statutably; howbeit the Act does not otherwise appear to contemplate a subject so boundless and so delicate. In former Acts, authority was given to seize unstatutory clothes; under *this* Act a Justice of the Peace, Sheriff, Steward of a Leet, Alderman, and all persons having authority to inquire of bloodshed and affrays were to sit upon presentments, for unlawful dressing. It is related by Hall, that Wolsey, on one occasion, called a gentleman named Simon Fitz-Richard, and took from him an old jacket of crimson velvet, and divers brooches. By each of the three former statutes of apparel, passed in this reign, persons of lower orders transgressing its rules were to be put in the *stocks for three days*; the fine of 3*s. 4d.* a day imposed by *this* statute on labourers would, probably, have led to a more protracted, though less ignominious course of imprisonment. Hall relates that one Shynninge, Mayor of Rochester, under colour of the Apparel Acts, set a young man on the *pillory* for wearing a *ryven* shirt; the *pinching* of shirts was a characteristic of knighthood, the *pillory* and the *stocks* were punishments *eiusdem generis*.

An anecdote of the times, related by Camden, illustrates the ambition of the lower orders to dress like their superiors, and the unwillingness of the higher orders to be copied by their inferiors. A shoemaker of Norwich, in the reign of Henry VIII.,

¹ The *rascality* of *copyholders* shews that, in the time of Elizabeth, they had not long ceased to be villains. Lord Coke cites an instance of the creation of a *Gentleman* by Richard II., in order to enable him to accept the challenge of a French knight. A yeoman, it appears, could not be made a knight, *per saltum*.

of the name of Drakes, coming to a tailor's, and finding some French tawney cloth lying there, which had been sent to be made into a gown by Sir Philip Calthrop, desired the tailor to buy as much of the same stuff for himself, and make a gown of it precisely of the same fashion as the Knight's. Sir Philip arriving some time afterwards to be measured, saw the additional cloth, and enquired whom it belonged to. "To John Drakes," replied the tailor, "who will have it made in the selfsame fashion as your's is made of." Whereupon the Knight ordered his gown to be as full of cuts as shears could make it, and both garments were finished according to order. The shoemaker, on receiving his gown slashed almost to shreds, began to swear at the tailor, but received for answer, "I have done nothing but what you bade me, for as Sir Philip Calthrop's gown is, even so have I made your's." "By my latchet!" growled the shoemaker, "I will never wear a gentleman's fashion again."

The motives of the law under review are set forth in its preamble more at length than in the preambles of the preceding three statutes of the reign on the subject of apparel. Those previous statutes have one and the same short standing preamble, viz. "Forasmuch as the great and costly array of apparel used within this realm hath been the cause of the great impoverishing of divers of the King's subjects, and provoked them to rob and do extortion, and other unlawful deeds to maintain thereby their costly apparel." In this Act the expressions "high and notable inconveniencies" supply the more definite phrases of robbery and extortion. "Light and inexpert persons" are not charged with committing crimes in order to be finely dressed, but the gravamen is laid in their own *undoing*, owing to their inclinations to "pride," which is alleged to be the "mother of all vices." A mischief is, for the first time, pointed out, viz. "the subversion of good and politic order in knowledge and distinction of people, according to estates, pre-eminentencies, dignities, and degrees;" the clause in which respect was a refinement on the

Roman law of Otho, being applicable not only to theatres, but to highways and bye-ways.

Besides the motives expressed in the Preamble of the Act, it may not be improbable that the framers of it were influenced by an apprehension similar to that expressed by Shakspere, lest "the toe of the peasant come so near the heel of the courtier, as to gall his kibe." The Apparel laws, also, increased the influence of the King, for, he thereby became not only the fountain of honour, but of dress; every elevation of rank which he conferred, carried along with it the privilege of being decked with some new silk, velvet, or fur; or of dazzling with some new colour. The conferring privileges of dress might, with as much probability as some of the suggestions in the statutes, have been a means of ruining the King's enemies, under colour of a compliment, after the example of Horace's *Eutrapelus*:

Eutrapelus, cuicunque nocere volebat,
Vestimenta dabat pretiosa, beatus enim jam
Cum pulchris tunicis sumet nova consilia, et spes,
Dormiet in lucem, scorto proponet honestum
Officium, nummos alienos pascet, ad imum
Thrax erit, aut olitoris aget mercede caballum.

It may be feared, that dress, when it became a matter of privilege and prohibition, was calculated to augment the number of the proud and contemptuous; to make dress an appendage of station, was not a likely way to diminish its attractions. Visible distinctions between classes were likely to diminish social sympathy, and to render one portion of society less sensitive to the oppression, injustice, and cruelty sustained by another wearing a different costume. Legislation itself might be influenced by distinctions of apparel between the governors and the governed. On the other hand, a fine dress is an incentive to industry; it is, in some degree, conducive to propriety of conduct; it tends to remove a sense of degradation, which is the mother of as many vices as pride.

In most instances, the countenance, the gestures, and, if occasion occur, the speech, proclaim the man more truly than coats, waistcoats, and breeches. A duke or a marquis would, under the Tudors, have been generally ushered into the higher *rooms* without an inspection of his doublet. And, if we may believe the preambles of statutes about the holders of enormous flocks of sheep, merchants, and manufacturers, and consider the growing importance of tenants for years, it may be suspected that there was somewhat of traditional prejudice in dressing them all worse than freeholders. There must have been both freehold and leasehold schools, else boys in the same class would have regarded each other's dress rather than his merits, envy would have been kindled on one side, contempt on the other, and rancour on both. Members of families would have become ashamed of seeing their more humbly clad, though, perhaps, wealthier relatives, taking seats at their tables, or their arms in the streets.

Among other inconveniences of the Act, a change of dress was to ensue on a change of fortune; if a man sold, or mortgaged a few acres, he might have been compelled to publish his total or temporary loss by darkening his coat, as, anciently, covering himself with sackcloth and ashes. Some persons relying on the acknowledged frequency of the law's evasion, might, under false *colours*, have the more easily imposed on tradesmen or maidens, in the *garb* of many-acred freeholders. If, indeed, the statute applied to women, it must be held chargeable for all the jealousy, vanity, envy, and other slumbering passions which it might have awakened; but, without such a malign construction, its coverings and colourings must have invested honorable or dishonorable suitors with undue attractions for captivating the less strongminded of the sex.

Excess of apparel, as Lord Coke observes, in his commentary on the statutes upon that subject, is best cured by example. Henry was not, in this respect at least, a good pattern to his

subjects. When he met Anne of Cleves he was, according to Hall, "habited in a coat of velvet, embroidered all over with flatted gold of damask, with small lace intermixed between of the same gold, and other laces of the same going traversewise, that the ground little appeared; and about this garment was a rich ground or border, very curiously embroidered: the sleeves and the breast were cut and lined with cloth of gold, and fastened together with great buttons of diamonds, rubies, and orient pearls." The items of the king's wardrobe, of which the details have come down to us, were on a scale of gaudiness and multiplicity that may be suspected to have been of kindred to pride, or, even to have been affiliated by that "mother of vices."

The principal objection to the Act may be thought to be its vexations. To be duly enforced, it must have led to inquisitorial searches into property, renewable at short periods, upon the suggestions of informers or malicious enemies. The value and the *bond fide* rent of landed property are not always easy of ascertainment, they are very easy of false representation, and erroneous or unjust adjudication. Among capricious distinctions we find one, that persons whose incomes were less than a particular amount, were not to wear cloth in their hoses above the price of 2*s.* the yard, whilst persons whose incomes were below another amount were not to wear cloth in their hoses above the price of 1*s. 4d.* the yard; this rule must have opened a door to collusion with tailors; and the wearers of cloth in hoses, within a certain range of income, must have been fearful of the eyes of their neighbours, and have felt insecure of keeping their hoses¹ on their legs.

¹ The writer of the volume on British Costume in the *Library of Entertaining Knowledge*, thinks that the *hose* was the upper portion of a covering for the legs, which was fastened by points to the *doublet*. The *stock* was the lower part that covered the legs and feet. The ultimate separation of the hose and stock confounded the hose with the breeches, and left the *stocking* an independent article of apparel. The following expressions occur in the reign of Henry VIII., "A yard and a quarter of green velvet for *stocks* to a pair of hose for the King's Grace;" the same quantity of "purple satin to cover the *stocks* of a pair of *hose* of purple

It is admitted, in the preamble, that, notwithstanding previous statutes, made with great deliberation, for expelling inordinate excess of apparel, unstatutory garments were "daily more and more used," and that the excess was "rather, from time to time, increased than diminished." Futility of legislation upon the subject was, therefore, fully demonstrated to the Reformation Parliament, who, nevertheless, persisted in passing on the subject a futile Act of their own. It cannot, however, be pretended that the Apparel Acts were harmless, because they were ineffectual. Instances have been above given of vexatious acts under colour of them; and, even after they had become obsolete, Lord Coke informs us that they "remained as snares to catch and vex men at the pleasure of the promoter." It has been suggested that the Parliament in this, and the like sumptuary laws, did not expect to be obeyed, but only wished to proclaim an authoritative declaration of what was wise and right. If the Legislature had contented itself with lecturing the people of England on the subject of their dresses, they would simply have made a display of folly and caprice; but, by their forfeitures of money and clothes, by their confining, for three days, in the stocks, by their letting loose on the nation swarms of informers, it is plain that they intended their so-called lessons to be obeyed as laws, the enforcement of which they designed to secure by material guarantees.

cloth of gold tissue for the King." Entries occur, in the King's inventories, of "stockyng of hose." The hose was fastened by auglettes (aiguillettes) to the doublet, as thus, "a doublet of white tylsent, cut upon cloth of gold, embroidered, with hose to the same, and claspes and auglettes of gold." Over the doublet was worn the jacket or jerkin, the coat or the gown, according to fancy or circumstances. Henry's own coats were of many denominations, lengths, materials, and colours. With regard to the whistles of mariners, it is related, that, in this reign, it was the last act of an English Admiral, when surrounded by the enemy, to cast his gold chain and gold whistle from his neck into the sea.

CHAPTER XV.

WALES. COUNTIES PALATINE.

THE uniformity of laws and judicature throughout England and Wales was accomplished in the reign of Henry VIII. The principality of Wales and the Counties Palatine afforded, at the time of the meeting of the Reformation Parliament, striking exceptions to such uniformity. Lord Herbert represents as the motive for the new government of Wales, that “it was doubted lest in these troublesome times some commotion might follow in this kingdom, and that, particularly, Wales, being a strong or fast country, might be a refuge for ill-affected persons; and, the rather, for that there were so many Lordships Marches in those parts, the several Lords whereof, having ampler power than they now enjoy, did protect offenders flying from one place to the other.” This view derives some corroboration from the circumstance, that the laws of Wales had not been adverted to, in Henry’s reign, until the critical period of the sixth session of the Reformation Parliament, when, by Act after Act, the constitution of the principality was entirely remodelled. The King would, by disposition, have been jealous of the independent sovereign power exercised both in Wales, and in the Counties Palatine, and other Franchises; he was not regardless of the profits of his prerogative. Whether Henry was influenced, to any extent, by such motives, or only by a love of his people, it seems probable that the work of uniformity would have been long deferred, but for his vigour and perseverance.—The subjects of this chapter relate to (1) the amalgamation of the laws

of England and Wales, (2) the absorption of Palatine and other franchises that encroached on royal power.

(1) *Wales.*

The administration of justice in Wales had, to the time of the Reformation Parliament, been vested in the hands of a hundred and forty Lords Marchers, each of whom exercised a kind of feudal sovereignty within his district, and enjoyed all the casual fruits of judicature: the law of Wales was diversified by a multiplicity of local customs. Thus the labour of amalgamation between Welsh and English institutions was Herculean.

Henry's improvements in the government and judicature of Wales commenced in the sixth session of the Reformation Parliament. In that session, four Acts were passed in relation to the administration of justice. In the preamble of one of these Acts it is recited, that "Forasmuch, as the People of Wales and Marches of the same, not dreading the good and wholesome laws of this realm, have, of long time, continued and persevered in the perpetration of divers and manifold thefts, murders, rebellions, wilful burning of houses and other scelerous deeds and abominable malefacts, to the high displeasure of God, inquietation of the King's well disposed subjects, and disturbance of the public weal, which malefacts and scelerous deeds be so rooted and fixed in the same people, that they be not like to cease unless some *sharp* correction and punishment for redress and *amputation* of the premises be provided, according to the demerits of the offenders."

In the preamble of another of these Acts the subornation of Juries in Wales is thus imputed. "Where for lack of diligent and sure custody of jurors sworn for trials of murderers, felons, and accessories of felonies and murders in Wales, and the Marches of the same, divers adherents, friends, and kinsfolks to such offenders have resorted to the same jurors, and have suborned

them to acquit divers murderers, felons, and accessories openly and notoriously known, contrary to equity and justice¹."

These Acts provide for Courts of Justice being held in peaceable places, and they contain prohibitions against casting missiles into courts, by "the mean or name of an *arthel*," or coming within two miles of them with any weapon², or privy coat of armour. The temper of the monarch spoke in a provision, that, if jurors acquitted a felon, *contrary to good and pregnant evidence*, the Judge might bind them over to appear before the President and Council, who were empowered to fine and imprison them at discretion. This punishment of jurymen for their verdicts was a stereotyping of the practice of the Star Chamber in England. In like manner, the English restrictions on the diversions of the labouring classes were imitated by a provision, against making, or procuring to be made, any games of *running, wrestling, leaping*, or any other games, with the exception of the game of shooting with the long-bow.

Other Acts concerning Wales were passed in the seventh, or last, session of the Reformation Parliament; one of these related to the appointment of Justices of gaol-delivery and Justices of the Peace; another is entitled "Concerning the laws to be used in Wales;" in the latter of these Acts (26 Hen. 8, c. 26) it is recited, that "Albeit the dominion, principality, and country of Wales justly and righteously is and ever hath been incorporated, annexed, united, and subject to and under the imperial crown of this realm, as a very member and joint of the same; whereof the King's most royal Majesty of mere *droit*, and very right, is very head, king, lord and ruler. Yet, notwithstanding, by cause that in the same country divers rights, usages, laws, and customs

¹ Sir Thomas Smith, speaking of English Juries after being sworn, writes, "The party with whom they have given their sentence, giveth the inquest their dinner that day most commonly." The Seven Bishopte dined their Jury. This was not for "lack of diligent and sure custody," though a jurymen might have speculated on the comparative daintiness of the dinners, of which he had the option.

² The weapons enumerated are bill, long-bow, cross-bow, handgun, sword, staff, dagger, halberd, moor-spike, spear.

be far discrepant from the laws and customs of this realm; and, also, by cause that the people of the same dominion have and do daily use a speech nothing like nor consonant to the natural mother tongue used within this realm, some rude and ignorant people have made distinction and diversity between the King's subjects of this realm, and his subjects of the said dominion and principality of Wales, whereby great discord, variance, debate, division, murmur and sedition had grown between his said subjects. His Highness, therefore, of a singular zeal, *love, and favour* that he beareth towards his subjects of his said dominion of Wales, minding and intending to *reduce them to the perfect order*, notice, and knowledge of the laws of this his realm, and utterly to extirp all and singular the sinister usages and customs differing from the same, and to bring his subjects of this his realm, and of his dominion of Wales, to an amicable concord and *unity*¹."

It was, therefore, enacted that "the country or dominion of Wales do stand and continue incorporated under, and annexed to and with the realm of England." Persons born in Wales were to "have, enjoy, and inherit all and singular freedoms, liberties, rights, privileges, and laws within this realm, as other the King's subjects naturally born within the same have, enjoy, and inherit." New Counties were erected in addition to the six established by the *Statutum Walliae* of Edward I. The laws of inheritance and all other English laws were to be after the English tenure, without division or partition, and not after any Welsh tenure, laws or customs. Lordships Marches were to be "united, annexed, and joined" partly to English and partly to Welsh shires. All Courts were to be kept in the English tongue; oaths of Officers and of Juries, Verdicts, wagers of law and affidavits were to be in English. No person speaking Welsh

¹ Lord Coke notices a more ancient device for *disuniting* England from Wales, viz. *Offa's dyke*, the vestiges of which have been recently explored by that eminent antiquarian, Dr Guest, Master of Caius College, Cambridge.

and not English was to hold any office. The Lords Marchers were to take half only of forfeitures on recognizances, instead of the whole, as formerly, the other half was to go to the King. In the then present and all future Parliaments there were to be two knights for the County of Monmouth, and one knight for every other county, with one burgess for each county town, except Merioneth. There was to be a commission "to inquire and search out, by all ways and means, all and singular the laws, usages and customs of Wales, and to certify them to the King and the Council." Whatsoever customs, usages and laws the King and the Council should "think expedient, requisite, and necessary" to retain, were to be preserved in full strength and effect, as if the Act had never been made. The King was empowered, during five years, to erect whatever courts of justice in Wales he thought fit. He was to be at liberty, during three years from the end of the then present Parliament, to "*suspend* for such time as shall please his Grace, or utterly to *repel*, revoke and abrogate the whole Act, or any part thereof, from time to time, as should stand with his most gracious pleasure."

A saving of the Act is a clog upon the clause substituting the English law of descent for *partible* inheritances, according to the tenure of Gavelkind, that had been prevalent in Wales. But, by the subsequent Act of the 34th and 35th Hen. VIII., partible inheritances are more unequivocally abolished; they were, in various ways, unfavourable to feudal fruits, especially in that incident to this species of tenure expressed by the adage, "The father to the bough, the son to the plough." On the other hand, the savings of the Act of the 27th of the reign were enlarged so as to comprehend (*inter alia*) "*bondmen*, and other hereditaments," so that every person, his heirs, successors and assigns might "hold and enjoy" (*inter alia*) his "*bondmen* and other hereditaments" as before the Act¹.

¹ *Vide supra*, p. 94 n. Among the archives of King's College, Cambridge, is the manumission of a villein, tem. Edward VI.

A question which turned upon the construction of this Act, touching the jurisdiction of the President and Council of the Marches over the four Counties of Herefordshire, Worcestershire, Shropshire and Gloucestershire, gave occasion to a learned and witty argument of Lord Bacon, when Solicitor-General. He said, that, “although the question was a great question, yet it was contracted into a small room ; for it is but a true construction of a monosyllable, the word *March*.” The drift of his argument is to shew that the word *marches* signified *limits, confines, or borders*, not a *linea imaginaria*; that the statute of the 27th of Henry VIII. extinguished marches, making them *shire-ground*; and that if the name *March* continued after this statute, it was by a “trope or *catachresis*,” and like to the “sound of a bell, after it hath been rung.” He inferred that a Commission directed to the President and Council of Wales for proceeding, according to their discretion, as a Court of Equity, which included the above-mentioned four counties, was legal ; but the Judges thought otherwise, and so the commission was reformed, but as Lord Coke complains, “not reformed in all parts, as it ought to have been;” for, he writes, “a commission, without an Act of Parliament, cannot raise a Court of Equity.”

The creation of more than thirty new seats in Parliament must, under the circumstances of Wales at this period, have augmented, in the Lower House, the influence of the Crown. The powers of erecting Courts, of retaining such of the old laws and customs of Wales as the King thought fit, and of suspending or repealing the whole Act, or any part of it, are remarkable examples of *delegated legislation*. These powers led the way to conferring an authority to “make laws for Wales at his Majesty’s pleasure;” the repeal of which authority was one of the articles, on the part of the House of Commons, in what was called the *Great Contract* in the reign of James I. The Chancellor dwells upon the Bill for effectuating that repeal, as being one of *grace*.

The final establishment, in this reign, of the government of Wales, was not completed till seven years later than the Reformation Parliament, which, however, originated a great and beneficial movement. Barrington, who was a Justice of three Welsh counties, is loud in his praises of this branch of Henry's laws; he expresses a sentiment, that the union of England and Wales by a wise establishment of uniformity in their laws, should never be forgotten by the two countries, when Henry's tyranny and oppression are dwelt upon¹.

The state of Wales and of the *marches* in the reign of Henry VIII. is illustrated by several letters of Lee, Bishop of Lichfield and Coventry, and President of the Marches of Wales. He appears to have exercised an arbitrary rule, making all the Welsh gentry abbreviate their names, by leaving out their numerous *sps*, and retaining only the last name. In one letter, in Ellis's *Collections*, he writes, "Although the thieves (as this bearer can tell you) have hanged me by imagination, yet I trust to be even with them shortly in very deed."

(2) *Counties Palatine.*

Earls Palatine, according to Bracton, and Lord Coke, had regal jurisdiction in all things, saving the supreme dominion of the King. The right of pardon, and the appointment of judicial officers, belonged to them and others who possessed royal franchises; all offences were said to be committed against the peace

¹ In rendering this just tribute to the laws made for Wales, Barrington must not be supposed to admit that all his traditional prejudices had *melted* away before his known familiarity with ancient statutes. He observes of the King, that his first twelve years might be compared to the *Quinquennium Neronis*. He expresses an opinion that Henry was, in the early parts of his life, magnificent and generous; but that "afterwards his prevailing passion appears to have been despotism and tyranny, attended with no small degree of cruelty; he was the first King of England who was styled *metuendissimus*; and no predecessor or successor ever equally deserved the epithet." In allusion to Burnet's information, that he had seen many statutes entirely drawn or corrected with Henry's own hand, Barrington remarks that "the king's pen may be said to have been often dipped in blood."

of the Lord of the Franchise, as, in other places, against the peace of the King. The powers of such petty potentates were unfit to be reposed in their hands, whilst their incongruity with the sovereign power of the State was unseemly and impolitic; their abolition added dignity and strength to the monarchy. By an Act passed in the last Session of the Reformation Parliament, the greater part of the privileges that had belonged to the lords palatine or other owners of franchises were taken from them, and annexed to the Crown.

In this Act it was recited that "divers of the most ancient prerogatives and authorities of justice appertaining to the imperial crown of the realm had been *severed* from it by the gift of the King's progenitors, to the detriment of the royal estate and delay of justice."

It was, therefore, enacted that, for the future, no subject should have the power to *pardon* offences committed in any part of the realm, or in Wales, or the marches thereof; but that "the King shall have the whole and sole power and authority thereof, united and knit to the imperial crown of this realm, as of good right and equity it appertaineth." None but the King alone was ever after to appoint justices in Eyre, of assize, of the peace, or of gaol delivery; save that justices of assize and of gaol delivery, and justices of the Peace for the County Palatine of Lancaster, were to continue to be appointed by commission under "the King's usual seal of Lancaster." All writs and indictments were to be in the King's name. The King was to have all fines, and his Purveyors were to procure "provisions for his Grace, the Queen and their children, as well within liberties and franchises as without, any grants, allowances, or other thing to the contrary, or let thereof, notwithstanding."

Mr Allen, in his Treatise on the *Prerogative*, writes of these enactments, "That the palatine jurisdictions regulated or abolished by this Act had been granted, or confirmed by the Crown to the ancestors of the persons who at that time enjoyed them,

cannot be denied: but, that they had been *severed* from the Crown, that there had been a time when the districts where they were exercised had been administered on the same footing with the other parts of the kingdom, requires more than the assertion of an Act of Parliament to establish. Several of them existed by prescription, and some of them could be traced back to the Conquest. The Earl of Chester was said to hold his earldom by his sword, as the King held the realm of England by his Crown; he had his barons and his Parliament. It was not till the Norman Conquest that England was truly consolidated into a single monarchy. The different kingdoms into which it was originally divided, had, till then, remained, in many respects, distinct, regulated by different laws enacted by separate assemblies, and administered by local authorities of their own. The Conquest united them into one whole, with the exception of particular districts that still retained some remnant of their primitive independence; and it was not till the Act of Henry, that, with the exception of the Duchy of Lancaster, these districts were placed under the same judicial system with the kingdom at large." Lord Coke states that the Counties Palatine of Chester and Durham were by prescription, and the County Palatine of Lancaster by Act of Parliament, being "the youngest brother, and yet best beloved of all other, for it had more honors, manors, and lands annexed to it than any of the rest."

The Act, however extensive in its terms, did not completely extirpate the evil of concurrent sovereignty. All criminal process, indeed, in Counties Palatine and franchises having *jura regalia*, was to be of the same effect as if the offences to which it related had been committed, tried, and determined in any other County of England. Yet, according to Sir Matthew Hale, and a decision reported in Dyer, the Act did not alter the title of the Bishop of Durham, or of any other holder of royal franchises, to forfeitures. Notwithstanding the Act, convictions for ancient, but not the modern, treasons continued a source of

emolument to Lords and Prelates, to whose merciful dispositions any prayers for remission or mitigation were to be addressed.

Mr Burke, in his speech on Economical Reform, thus speaks of ancient royal franchises, as being, in power, defunct, but kept alive for the purpose of influence, and the multiplication of places. He takes the following lively view of the transmigrations of royalty in passing from one ancient franchise to those of another: "Our Sovereign condescends to dissipate the royal character, and to trifle with those light subordinate lacquered sceptres in those hands that sustain the ball, representing the world, or which wield the trident that commands the ocean. *Cross* a brook, and you lose the *King* of England, but you have some comfort in coming again under his Majesty, though shorn of his beams, and no more than the *Prince* of Wales. Go to the North, and you will find him dwindled to a *Duke* of Lancaster; turn to the West of that North, and he pops upon you in the humble character of an *Earl* of Chester. Travel a few miles on, the Earl of Chester disappears, and the *King* surprises you again as *Count Palatine* of *Lancaster*. If you travel beyond Mount Edgecombe, you find him once more in his incognito, and he is *Duke of Cornwall*. So that quite fatigued and satiated with this dull variety, you are infinitely refreshed when you return to the sphere of his proper splendour, and behold your amiable Sovereign in his own, simple, undisguised, native character of Majesty."

CHAPTER XVI.

SUPREMACY AND THE ANGLICAN CHURCH.

THE main achievement of the Reformation Parliament was the subversion of the Papal Supremacy. But this Parliament, further, accomplished several salutary reforms in the Anglican Church. It, also, largely increased the power of the Crown, by uniting with it that of the Keys, and augmenting its possessions in heaping on them the domains of the Monasteries. Whilst renouncing the headship of the Pope, it cherished and enforced the doctrines of Popery.

It is not wholly improbable, that if Henry had not emancipated the kingdom from the thraldom of Rome after a fashion of his own, the Papal Supremacy would have fallen, in a short space of time, owing to the progress of reason and liberty, and the spread of protestant doctrines; in which case, the history of the Reformation in this country might have been unpolluted by spoliation and bloodshed. But there is much probability, on the other hand, that its fall would have been long deferred, but for the violence of Henry's passions, his moral unscrupulousness, and the extraordinary firmness of his character.

The subversion of the Papal supremacy was, in every point of view, a signal benefit to the nation: but it is chiefly to be valued for a consequence of it which was repugnant to the sentiments of Henry and his Parliaments, that of facilitating the subversion of the Roman Catholic faith. This historical phenomenon is the more remarkable in that the bonds of Rome had been cheerfully borne by the King and his people during the first twenty years of Henry's reign, and were then suddenly and angrily broken; and in that the Anglican Church was simultaneously

swept by the besom of reform, amid the blossoms of its imperfections, which had been expanded under similar toleration and indulgence.

With regard to the Anglican Church,—a single statute, during the twenty years preceding the Reformation Parliament, had given offence: it was passed in the fourth year of the reign, and although merely levelled at *laymen* who “bore them bold of their clergy,” its continuance was limited till the next Parliament, and, then, it was suffered to expire. With regard to the Papal See,—in the Subsidy Acts passed in the course of the same twenty years, the King’s expences in protecting the Pope were adduced as a pretext for taxing the English people. In the preamble of one of these Acts it is stated that “our holy Father, the Pope, for the charitable reformation of the French King, willing the health of the soul of the said French King, hath, for his presumptions, declared and published the whole realm of France to be interdicted.” In the Subsidy Act of the Session of Parliament next before the meeting of the Parliament of the Reformation, it is recited that the King “intended further pursuit of his noble enterprise, as well for reducing the French King unto *due obedience to the See Apostolic*, as the realm of France to the obedience, rule, and governance of our lord the King, according to his very just right and title;” and, among the reasons for a declaration of war contained in the Act, is inserted the “being thereto *required* by the *Pope’s Highness*, and his dear ally, the Emperor.”

When Sir Thomas More was charged by the Council with instigating the King to maintain the Pope’s authority in the famous book on the Seven Sacraments, More replied that he had advised the King to amend the passage, and to “touch more slenderly” the Pope’s authority; to which the King replied (according to Roper), “Nay, that it shall not; we are so much bounden unto the See of Rome, that we cannot do too much honor unto it;” and More stated, that, upon calling to the

King's remembrance the statutes of *Præmunire*, his Highness answered, "Whatsoever impediment be to the contrary, we will set forth that authority to the uttermost, for we received from that See our crown imperial." Henry's book was presented to the Pope with Latin verses, signifying that it was a testimony of *faith* and *friendship*.

Henry committed a breach of the constitution, in the fifth year of his reign, by creating the Abbot of Tavistock and his successors to be Lords of Parliament. Coke calls this "a rare and strange creation," and void; for he argues that, by parity of reason, the King might create Deans and Archdeacons, with their successors, Lords of Parliament, which, he says, "without question, he cannot." This stretch of the prerogative contributes to shew that the King, previous to his quarrel with the Pope, was not incensed against the order of Abbots. Before the same epoch he was content with sacerdotal Chancellors.

It will be necessary, in treating of the ecclesiastical Acts of the Reformation Parliament, to consider, in connexion with each other, the progress of Henry's quarrel with the Pope, the statutes for subverting the Papal Supremacy, and those for the reform of the Anglican Church. These measures were suddenly commenced at the same epoch, and they explain each other. There may be reasons for supposing that the King's quarrel with the Pope, whether upon public or personal grounds, was the pivot round which all the ecclesiastical laws of this Parliament were turned. *Hinc omne principium, huc refer exitum.*

In consequence, as the King alleged, of a prick of conscience at having lived for twenty years in open incest, he had applied to the Pope for a divorce, in somewhat imperious terms, viz. *convolare ad secundas nuptias non patitur negativum*. After the two legates, Cardinals Wolsey and Campeius, had held that Court which is commemorated by our immortal dramatist, the King's cause was evoked to Rome in July, 1529. The Reformation Parliament was summoned in the August, but did not meet till

the November of that year. As no Parliament had met during the preceding seven years, it is probable that the calling of it was not unconnected with the flight to a second marriage.

The measures of the Reformation Parliament concerning the Church at home receive illustration from an address to the King, presented in the name of the Commons of England, which contained a catalogue of grievances alleged to be sustained by the nation owing to the oppressions of the Clergy, especially the Bishops. This address indicated the design of a systematic scrutiny into all the abuses, real or pretended, that had been imputed to the Anglican Church. The King's conduct and observations with regard to it, shewed that he favoured, and, perhaps, had originated, the bold and novel inquiry. They also exhibit the point of view in which the subject was particularly interesting to him; viz. the divided allegiance of his Prelates. He probably thought that their oaths to the Pope on their consecrations, and their ordinations, although sanctioned by English Kings for centuries, would lead them to take part against him in the impending struggle. Sir Matthew Hale observes that Henry had formed a resolution "to curb the clergy, who were too obsequious to the Pope and his power."

The King referred the address of the Commons to the Bishops, from whom he required an immediate answer to the charges contained in it. The Bishops, accordingly, made answer to the accusations *seriatim*. Upon the receipt of this answer, the King, on the last day of April in the twenty-fourth year of the reign, sent, as Hall writes, for the "Speaker of the Common House, and certain other, and declared to them how they had exhibited a book of their grievances, the last year, against the spirituality, which, at their request, he had delivered to his spiritual subjects, to make answer thereto; but he could have no answer till within three days last past. He thereupon delivered the answer to the Speaker, saying, We think their answer will smallly please you, for it seemeth to us very slender. You be a great sort of wise-

men, I doubt not but you will look circumspectly on the matter, and we will be indifferent between you."

"On the eleventh of May, the King sent for the Speaker again, and twelve of the Common House, having with him eight lords, and said to them, Wellbeloved subjects! we thought that the Clergy of our realm had been *our* subjects wholly, but, now, we have well perceived that they be but *half our subjects*; yea, and scarce *our subjects*, for all the Prelates, at their consecration, take an oath to the Pope clean contrary to the oath they make to us, so that they seem to be *his* subjects, and not *ours*. Copies of both the oaths I deliver here to you, requiring you to invent some order that we be not thus deluded of our spiritual subjects. The Speaker then departed, and caused the two oaths to be read in the Common House."

The Clergy of England, in their courts, their monasteries, and in a variety of vocations, had been, for centuries, including the first twenty years of the reign of Henry VIII. without adequate domestic control, and had basked in the special favour of Sovereigns, and of clerical Chancellors and ministers. It might, therefore, have been anticipated, that abuses among them should have accumulated and become inveterate, and that, when animadversion upon such abuses came, quite on a sudden, not only to be permitted, but encouraged by the King, they should have been, in many instances, exaggerated, misrepresented, fabricated, or transferred indiscriminately from individuals to a whole class. *Cupide conculcatur prius ante metuitum.*

The ecclesiastical reforms which were accomplished by the Reformation Parliament called from Hall the reflection, that "These things, before this time, might in no wise be touched, nor yet talked of by any man, except he would be made a heretic, or lose all that he had; for the Bishops were Chancellors, and had all the rule about the King, so that no man durst presume to attempt any thing contrary to their profit or commodity."

It is proposed to consider the ecclesiastical laws of the

Reformation Parliament in chronological order, and under the heads of its seven Sessions.

Session I. A.D. 1529.

The first Act of the Session pertinent to the present inquiry was one relative to the branding and transporting of *Sanctuary-men*, (21 Hen. VIII. c. 11). This Act infringed upon a privilege of the clergy, by weakening their protection of felons; but as it immediately followed a General Pardon, and was conducive, as far as it went, to the due administration of justice, it was judiciously placed in the vaward of ecclesiastical reform.

The next Act in this Session, upon the subject of the present chapter, related to the reduction of fees upon *Probates* and *Administrations* (21 Hen. VIII. c. 5). The opportunity was neglected, or the measure was deemed too hardy, of abolishing the jurisdiction of the Ecclesiastical Courts in such matters, which originated in a priest-ridden age. But the object of the Act may have been attained by the intimation it conveyed to the Prelates, that their profits might be diminished and their characters impugned, if they exhibited a refractory spirit. The number of payers greatly exceeding that of the receivers of fees, it could not fail of ensuring popularity. The Act was introduced into the House of Commons by Sir Henry Guilford, Knight of the Garter, and Comptroller of the *King's Household*.

The Preamble of this Act is remarkable for its censure of the Bishops for exactions against right and justice. After reciting several ancient laws on the subject of fees, the last of which, it is stated in the Preamble, was only temporary, by reason that "the *Ordinaries*¹ did then promise to reform and amend the oppressions and exactions complained of; and for that the *unlawful exactions of the Ordinaries* and their ministers be no-

¹ The term *ordinary* is, in general, used synonymously with that of Bishop; it, however, includes every ecclesiastical judge who has the regular *ordinary* jurisdiction independent of another.—Co. Litt. 344.

thing reformed or amended, but greatly augmented and increased, *against right and justice*, and to the great impoverishing of the King's Subjects."

The next chapter of the Session related to *Mortuaries* (21 Hen. VIII. c. 6). It would seem, that, at the time of the passing of this statute, a donation, called a *corpse-present* or mortuary, which was brought to the church along with a corpse, had, by degrees become compulsory. This was usually the best beast or chattel of the deceased, or the next best, when the Lord of a Manor claimed the best for a heriot. The mortuary occasioned numerous unseemly conflicts: there is a mortuary-suit mentioned in Hale's *Precedents*, for a dead man's cloak; Hall notices the seizure, from a poor family, of a mortuary-cow. Owing to the establishment of burial-fees, which, Lord Stowell thought, might be traced nearly to the Reformation, mortuaries, though still holding a place in parochial tables, have ceased, in practice, to be reckoned among the emoluments which have been suggested to be preferable to a Bishop's blessing¹.

In this statute, as in the last, relief is afforded the community, by a curtailment of clerical fees; but, here, the parochial clergy, as before the prelates, are mulcted in profits, and aspersed in reputation. It may be difficult, in the present day, to judge what fees were excessive, or how long they might have been customary, though it is probable that they would have grown apace so long as few would have resisted exactions against which it might have been heresy to breathe.

It is recited, in the Preamble, of the Act, that the "greatness and value of Mortuaries, as hath lately been taken, is thought

¹ See concerning mortuaries, Spelman, *De Sepultura*: on the distinction between burial-fees and mortuaries, a full note to the case of *Andrews v. Cawthorne*, Willes, 536. Lord Stowell's judgment on the case of metal coffins, Haggard's *Rep.* The highest mortuary fee, by the statute, is ten shillings, though Pope sings of a mortuary guinea:

October store, and best Virginia,
Tythe-pig, and mortuary guinea.

over excessive to the poor people and other persons of this realm ; and also for that such mortuaries have been demanded and levied for such as at the time of their death have had no property in any goods or chattels ; and many times for travelling and wayfaring men, in the places where they have fortuned to die."

The last Act of this Session affecting the Clergy related to Pluralities, Non-Residence, taking of farms, and trading (21 Hen. VIII. c. 13) ; upon which subjects it contained the principal enactments in force before the reign of Victoria. Provisions with regard to such matters are of lasting importance for the fulfilment of the purposes for which a national Church is established ; they were the topics of many Ecclesiastical Canons. "Were I Pope," writes Sir Thomas More, "I could not well divine better provisions than are by the Church provided already, if they were as well kept as they are well made." But benefit must have resulted from promulgating, and enforcing by temporal penalties, this branch of clerical discipline, in an Act of Parliament. It may, perhaps, be collected from the following statements, that the Act may have been brought forward less from a motive of converting Canon-Law into Statute law, than with a design of weakening the dependence of the Clergy on the Pope, and strengthening their dependence upon the King ; thus promoting their compliance with the royal will.

The object of the Act is recited, in its preamble, to have been "for the more quiet and virtuous increase and maintenance of divine service, the preaching and teaching the word of God, with godly and good example giving, the better discharge of curates, the maintenance of hospitality, the relief of poor people, the increase of devotion, and the good opinion of the lay-fee toward spiritual persons." This Preamble is, among those pre-fixed to ecclesiastical laws, unusually free from censoriousness ; in fact Henry and former kings of England had lavished the most shameless pluralities : Wolsey's style, in an indenture

made, after his fall, with the king was, “Thomas, Lord Cardinal, Archbishop of York, Bishop of Winchester, and Comendatary of the Abbacy of St Alban’s.” To the time of his fall he was, also, Legate and Chancellor.

Papal Dispensations with pluralities and non-residence, which bound the clergy to the See of Rome, were abolished by this Statute, wherein it was enacted, with regard to Pluralities, that “every license, union, or dispensation had or hereafter to be obtained contrary to this present Act, of what name or names, quality or qualities soever they be, shall be utterly void;” and, that “if any person contrary to this present Act, procure or obtain at the *Court of Rome*, or elsewhere, any licence, union, toleration, or dispensation” to take more benefices than were allowed by the Act, or put in execution the same, he was to lose the profits of the benefice so acquired, and pay a forfeiture of twenty pounds. Similar provisions concerning Papal licenses and dispensations were enacted with regard to Non-Residence.

In order to create a plurality by the acceptance of a second benefice, the first must have been of the yearly value of *eight pounds*, or above; an enactment of which the operation would be affected by an increase in the value of money: and yet, until the reign of Victoria, eight pounds, according to the *Book of Henry VIII.*, continued the test for determining what should be a legal or illegal plurality. The Act contains a curious provision against spiritual persons keeping any tan-house, or brew-house; the Commons, in a petition to the king concerning clerical abuses, had made a particular complaint of reverend tanners and brewers. An exception authorizing sales by clergymen of things which they had bought for certain purposes, does not sufficiently guard against such sales being transacted in person, at markets, or other public places of sale; a ground of scandal which was not provided against until a statute of Victoria. When parson Trulliber mistook the purport of parson Adams's visit, supposing it to have been made with the object of buying pigs,

he thus accosts him: “Yes, yes, I have seen you often at *fair*; now, we have dealt before now man, I warrant you, though I never sold thee a flitch of such bacon as is now in my sty. Do but handle them; thou art welcome to handle them, whether thou dost buy or no.” No beneficed clergyman was allowed to take any “stipend or salary to sing for any soul;” an abuse of as old standing as the days of Chaucer, who writes, in his character of the good parson:

He set not his benefice to hire,
And left his sheep accombered in the mire,
And ran unto London, unto Saint Poules,
To seken him a chantry for souls.

The King’s views of acquiring influence over the English Clergy, not without some regard to his emoluments, may be thought to have suggested the numerous instances in which licenses and dispensations were allowed by the Act to be *purchased*. Spiritual men of the King’s Council might purchase a license or dispensation to hold three benefices; all the chaplains of the king and each member of the royal family might purchase a license to hold two; and a license to hold the same number might be purchased by six chaplains of dukes and archbishops; five chaplains of marquises and earls; four chaplains of viscounts and bishops; three chaplains of the chancellor, every baron, and knight of the garter; two chaplains of every duchess, marchioness, countess and baroness, being widows; two chaplains of the treasurer, comptroller, the King’s secretary, Dean of the chapel, almoner, master of the rolls; one chaplain of the Chief Justice of the King’s Bench, and of the Warden of the Cinque Ports. The brethren and sons of temporal lords and of *knight*s might purchase for themselves licenses and dispensations to hold two benefices. Doctors and bachelors of divinity, doctors of law, and bachelors of the *law canon*¹, might purchase licenses to hold

¹ Henry VIII., in the 27th year of his reign, issued a mandate to the Universities for discontinuing degrees in the *Canon* law. *Baronets* did not then exist, to the prejudice, in later times, of their *brethren* and *sons*.

two benefices. In the same Act two more chaplains are allowed to Archbishops and Bishops respectively, with liberty for each of them to purchase licenses for holding two benefices.—The Act contains a similar series of exceptions for non-residence, with a few variations, as, for instance, one for the non-residence of spiritual persons “going to any pilgrimage or holy place beyond the sea.”

The Act, in further advancement of the King’s influence over the clergy, contains the following proviso: “Provided also, that it shall be lawful to every spiritual person or persons, being chaplains to the King, to whom it shall please his highness to give any benefices or promotions spiritual, *to what number soever it be*, to accept and take the same, without incurring the danger, penalty, and forfeiture in this statute comprised: and that, also, it shall be lawful for the King’s Highness to give license to every his own chaplains for non-residence on their benefices, anything in this present Act contained to the contrary notwithstanding.”

The following license of non-residence appears, in Rymer, to have been granted by the King in the 27th year of his reign, subsequently to the passing of this Act. It will be observed that it contains a recital, at length, of the clause against non-residence, that it is a license for life, and is made applicable to every benefice which the grantee had, or might thereafter have, and that, after a hypocritical enumeration of holy places where the grantee was at liberty to reside, it is added, or in any other honest place, (*vel in aliquo loco honesto*). The license concludes with a *non obstante* of the Act under review, and also of any other Act made, or that might be made *in future*.

“Cum, per quendam Actum in Parlamento nostro, anno regni nostri vicesimo primo, inter alia auctoritate ejusdem Parlamenti ordinatum existit (here the clause of the Act touching non-residence is transcribed at length), sciatis quod nos, de gratiâ nostrâ speciali, licentiam damus et concedimus specialem

dilecto nobis in Christo Roberto Richardson clero, rectori ecclesiae parochialis de Colyngborn, quod idem Robertus, a primo die Decembbris anno regni nostri vicesimo septimo, durante vita sua, in aliquid ecclesiae conventuali, collegiata, vel parochiali, aut in aliquo monasterio, collegio, vel parochia, vel in aliqua capella, sive *cantariâ*, vel in *aliquo loco honesto* permanere, expectare, et moram trahere, ac a rectoria sua *necnon a predictâ rectoria et ecclesiâ de Colynborn*, et *quocunque alio beneficio* ecclesiastico, quod idem Robertus in praesenti habet, possidet, aut obtinet, aut in *futurum* habebit, possidebit, et obtinebit, abeque aliquâ residentiâ personaliter in eisdem rectoriâ ecclesiâ et beneficio, aut eorum aliquo, per ipsum fienda et habenda, se absentare possit et valeat, prout idem Robertus se absentavit vel absentare potuisset, ante editionem predicti Actus et prout Actus ille minime editus sive factus fuisset. *Praedicto Actu sive Statuto*, aut aliquo alio Statuto, Actu, sive Ordinatione, in contrarium edito, sive *imposterum fiendo*, aut aliqua re, causa, vel materia quacunque *non obstante*."

The following license for pluralities, or, as it is termed, *ad incompatibilia*, was granted in the same year as that for non-residence. It will be observed that it authorizes the holding of three benefices, and has so little reference to their size, value, distance, or like circumstances, that it was applicable to *any third benefice* (*quocunque tertium*) which the pluralist could obtain in addition to the two of which he was already in possession; and, without regard to those two, that it might be applied to any three benefices whatever (*sine illis, quæcunque tria alia curata*). The license is guarded by a *non obstante* of statutes made by the King or his ancestors to the contrary, and of all other matters, causes, or things.

"Sciatis quod nos, de gratia nostra speciali, ac ex certa scientia, et mero motu nostris, concessimus et licentiam dedimus dilecto nostro Roberto Shether Baccalaureo in Theologia, quod Ipse una cum Vicariis perpetuis Ecclesiarum Parochialium

de Hendon et Waltham Magna Londoniensis Diœcesis quas ipse nunc obtinet, *quodcumque tertium et sine illis quacunque tria alia curata*, seu alias incompatibilia Beneficia Ecclesiastica, recipere, et insimul quoad vixerit retinere valeat et possit. Aliquo Statuto, sine Actu nostro, aut Progenitorum nostrorum antehac in contrarium edito vel proviso, aut aliquâ aliâ re, causâ, vel materia quacunque in aliquo *non obstante*."

The dependent condition of chaplains at this period may throw light on the influence, in church matters, acquired under the Act by the King and the nobility, the constituted fountains of plurality and non-residence. In ancient household books are many entries of wages and livery to chaplains; they kept accounts of kitchens and farms, delivered messages and letters. The Dean of the Duke of Northumberland's chapel sat to dinner at the same table with the gentlewomen and ushers. Sir Thomas More writes, that "every man must have a priest in his house, to wait upon his wife, which no man almost lacketh now, to the contempt of the priesthood, in so vile an office as his house-keeper." This condition of chaplains qualified, by the Act, to become pluralists, appears from contemporary documents to have been much the same in the time of Henry VIII., as in the days of Piers Plowman.

Bishopes and bachelers
 Bothe maisters and doctours,
 That *han* care under Crist,
 Ligger at London,
 Some serven the Kyng,
 And his silver tellen
 In Cheker, and in Chauncelrie,
 Chalengen his dettes;
 And some serven, as servauntz,
 Lordes and Ladies,
 And, in stede of stywardes,
 Sitten, and demen.

It may be suspected that the excellent motives assigned in the Preamble of the Act, and the beneficial tendencies of several of its enacting clauses, were not free from alloy. The privileges of chaplains to the nobility, and the King's power of authorizing pluralities *to what number soever*, must have crippled the operation of the law. The members of the Lower Houses of Convocation were thereby exposed to temptations, resulting from the patronage of licensed pluralities. It is probable that pluralities and non-residence would have been left under the governance of ecclesiastical courts, but that this Act was calculated to sap the opposition of Henry's clergy, in his quarrel with the Pope, as it was the more obvious tendency of other Acts to batter it. Dispensations and licenses had kept the longing eyes of a large portion of the Clergy wistfully directed towards the Pope; this Act substituted attractions of the like species, which diverted the same eyes from a foreign object, and fixed them at home, on the King.

When the Bills upon the above ecclesiastical matters were brought from the Lower House to the House of Lords, the Bishop of Rochester made a speech, in the course of which he used the expression, "lack of faith," which gave great umbrage to the Commons, as is noticed, in a previous chapter, with reference to the usages of Parliament. In Dr Bailey's treatise on the life and death of Bishop Fisher, the bishop's speech is represented to have contained the following anticipations of the spoliation of Church property. "My lords, I hear there is a motion made that the small monasteries should be given up into the King's hands, which makes me fear that it is not so much the good as the goods of the Church, that is looked after. To me it appears that our holy mother was, by little and little, to be quite banished out of those dwelling places, which the piety and liberality of our forefathers have conferred upon her. Otherwise to what tendeth these portentous and curious petitions from the Commons? To no other intent or purpose, but to bring the

Clergy in contempt with the Laity, in order that they may seize the patrimony of the Church."

Session II. A.D. 1530—1.

The ecclesiastical laws in the second Session of the Reformation Parliament, like those in the first, chiefly related to the Anglican Church ; the opinions of the Universities were a concurrent stratagem for expediting the divorce.

An Act, which has been treated of in the chapter concerning the *Poor*, was passed in this session, for the punishment of beggars and vagabonds (22 Hen. VIII. c. 12). It is therein enacted that, among other vagrants, "all *Proctors* and *Pardoners* going about in any country without sufficient authority were to be drawn, on two successive days, through the next market town, tied to the end of a cart naked, and to be whipped on their way till their bodies were bloody. This punishment was to be repeated, upon repetition of their offences, with the addition of the pillory and loss of ears.—*Proctors* were officers of the ecclesiastical courts, analogous to attorneyes of the civil courts, for the whipping of whom there is no corresponding provision. *Pardoners*, according to Chaucer's description of their vocation, brought pardons and relics of saints from Rome and distributed them through the country; they sometimes officiated in clerical services. Chaucer gives his *pardoner*, as does the statute, for a companion, an Officer of the Ecclesiastical Court.

With him ther rode a gentil *Pardonere*,
 Of Rouncevall, his frend, and his compere,
 That streit was comen from the Court of Rome.
 Ful loude he sang, Come hither, love to me.
 His wallet lay before him in his lappe
 Bret-ful of *pardons* come from Rome al hote.
 But of his craft, fro Berwike unto Ware,
 Ne was ther swiche an other *pardonere*,
 For in his male he hadde a pilwebere,

Which, as he saide, was oure ladies veil :
He saide, he hadde a gobbet of the sail
Thatte saint Peter had, whan that he went
Upon the see, till Jesu Crist him hent.
He had a crois of laton ful of stones,
And in a glass he hadde pigges bones.
But with these relikes, whanne that he fond
A poure persone dwelling up on lond,
Upon a day he gat him more moneie,
Than that the persone gat in monethes tweie.
And thus with fained flattering and japes,
He made the persone, and the peple, his ape.
But trewely to tellen atte last,
He was in chirche a noble ecclesiast.
Wel coude he rede a lesson or a storie,
But alderbest he sang an offertorie :
For wel he wiste, whan that song was songe,
He muste preche, and wel asile his tonge,
To winne silver, as he right wel coude :
Therfore he sang the merrier and loude.

An Act followed concerning Sanctuaries (22 Hen. VIII. c. 14), and another for the pardon of the clergy, in the matter of the *Præmunire* (22 Hen. VIII. c. 15). Both these Acts have been treated of in former chapters; it is, however, proper, in this place, to notice, with regard to the latter Act, which was, in fact, the ratification, by Parliament, of an enormous penalty, that it inflicted a stumping blow on the clerical order. This plunder was aggravated by a contemptible pretext of law; it involved every clergyman, although he might not willingly or unwillingly have bowed to Wolsey's legatine power; it was the more inequitable in that all the laity, however some of them might have been among Wolsey's most attached *fautors*, were pardoned. From the date of this grievous imposition all the spirit of convocations was subdued; their resolutions were thenceforth

obtained and used only for a covering or colouring of Henry's measures¹.

Session III. A.D. 1531—2.

In this Session the procrastination manifested in the proceedings at Rome, in the matter of the divorce, seemed to suggest the use of more pungent stimulants than had theretofore been administered.

The first Act of this Session was for taking away the benefit of clergy from the perpetrators of certain offences (23 Hen. VIII. c. 1). This Act was treated of in a former chapter, where, it is stated in its preamble as there detailed, that clerks convict were set at large by the ministers of Ordinaries "for corruption and lucre;" that the Ordinaries would "in no wise take the charges in safe keeping of them," and, "by *fraud*, made void all the good trial that is used against such offenders by the King's laws." By this Act, the privilege of clergy was curtailed, and the integrity of the Bishops and their ministers impugned; but, as yet, real clerks within holy orders were left in the enjoyment of virtual impunity for crimes.

The next Act of an ecclesiastical nature passed in this session related to citations of persons out of the dioceses in which they resided (23 Hen. VIII. c. 9). In this Act it is recited that, "Great number of the King's subjects, as well men, wives, servants as others have been at many times called by citations and other processes compulsory to appear in the Arches audience and other high courts of the Archbishops of this realm far from

¹ The transaction of the *præmunire* is represented, throughout this work, as a gross perversion and abuse of law, and a flagrant deed of tyranny and iniquity; it is proper to caution readers, that this view of the matter has not been universally entertained. A recent historian writes upon the subject, "Their punishment, if tyrannical in form, was *equitable* in substance, and we can reconcile *ourselves*, without difficulty, to an act of judicial confiscation." He admits that "Wolsey's legatine faculties had been the object of their general dread," and that "where, in point of law, all persons were equally guilty, in *equity* they were equally innocent."

and out of the dioceses where such men, wives, servants and other the King's subjects have been inhabiting and dwelling, and many times to answer to surmised and feigned causes, and suits of defamation, withholding of tithes, and such other like causes and matters, which have been used more from malice and for vexation than for any other just cause of suit."

"And where certificate hath been made by the summoner, apparitor, or any such *light literate* person, that the party against whom any such citation hath been awarded, hath been cited or summoned and thereupon the same party so certified to be cited or summoned hath not appeared according to the certificate, the same party therefore hath been excommunicated, or, at least, suspended from all divine service. And, thereupon, before that he or she could be absolved, hath been compelled not only to pay the fees of the Court whereunto he or she was so called by citation or other process, amounting to the sum of 2*s.* or 20*d.* at the least; but also to pay to the summoner, apparitor, or other light literate person, by whom he or she was so certified to be summoned, for every mile being distant from the place where he or she then dwelled unto the same court whereunto he or she was so cited or summoned to appear 2*d.*, to the great charge and impoverishment of the King's subjects, and to the great occasion of misbehaviour, and misliving of wives, women, and servants, and to the great impairing and diminution of their good names, and honesties."

It was, thereupon, enacted, that with certain exceptions, no person should be summoned out of the diocese in which he resided. One of these exceptions is, "in case the Bishop or other immediate judge or ordinary dare not, nor will convenant the party to be sued before him." The fees of a citation are fixed at 3*d.*; penalties for disobeying the Act are suspended over "Ordinaries, Commissioners, Archdeacons, officials, or other judges."

The *light literate* summoner of the Ecclesiastical Courts is described by Chaucer, in the Introduction to his *Canterbury*

Tales. After describing his fine red Cherubim's face, and other particulars of his appearance, the poet continues

And whan that he wel dronken had the win,
 Than wold he speken no word but Latin.
 A fewe termes coude he, two or three,
 That had lerned out of som decree ;
 No wonder is, he herd it all the day.
 And eke ye knownen wel, how that a jay
 Can clepen watte, as wel as can the pope.
 But who so wolde in other thing him grope.
 Than hadde he spent all his philosophie,
 Ay, *Questio quid juris*, wolde he crie.
 He was a gentil harlot and a kind ;
 A better felaw shulde a man not find.
 He wolde suffre for a quart of wine,
 A good felaw to have his concubine
 A twelve month, and excuse him at the full.
 Ful prively a finch eke could he pull¹.
 And if he found owhere a good felawe,
 He wolde techen him to have non awe,
 In swiche a cas, of the archedekenes curse ;
 But if a manne's soule were in his purse,
 For in his purse he shulde ypunished be.
 Purse is the archdeken's helle, said he.

In the *Frere's Tale*, Chaucer enters at large into the practices of the Ecclesiastical Courts; the poet thus describes the summoner knocking at an old woman's door for the purpose of serving a summons, and bargaining to acquit her.

I have, quod he, of somons here a bill :
 Up peine of cursing, loke that thou be
 To-morwe before the archedeken's knee,
 To answer to the court of certain things.
 May I not axe a libel, Sire Sumpnour,
 And answer ther by my procuratour,

¹ "To pull a fence," was a phrase for depriving a man by fraud, of his money.
 —*Tyrwhitt.*

To swiche thing as men wold apposen me?
Yes, quod this Sumpnour, pay anon, let see,
Twelf pens to me, and I wol thee acquite.
I shall no profit han thereby but lite:
My maister hath the profit, and not I.
Come of, and let me riden hastily;
Yeve me twelf pens, I may no langer tarie.

Chaucer's *Frere*, in his *tale*, retaliates on the summoner who had maligned him for no other cause than because his *order* was exempt from the jurisdiction of the Bishop, and, consequently, he was not liable to be pillaged by the summoner.

It might have been expected that, in the absence of adequate control, abuses of the nature of those reprobated in the Act, would have fructified in the ecclesiastical courts, especially among subordinate officers; the answer of Archbishop Wareham to the Petition received by the King from the Commons against the Clergy, apparently confirms the imputations upon this subject cast by the Commons. The Archbishop answers, "Item where they say that your subjects be cited out of the diocese which they dwell in, and, many times, be suspended and excommunicate for light causes, upon the only certificate devised by the *Proctors*, and that your subjects find themselves grieved with the excessive fees taken in the spiritual courts:—To this article, because it concerneth specially the spiritual courts of me the Archbishop of Canterbury, please it your Grace to understand, that, about twelve months past, I reformed certain things objected here; and now, within these ten weeks, I reformed many other things in my said courts, as I suppose is not unknown unto your Grace's Commons. Some of the fees of the officers of my courts I have brought down to halves, some to the third part, and some wholly taken away and extincted. Nevertheless, I shall not cease yet; but, in such things as I shall see your Commons most offended I will set redress accordingly."

The Act, as far as it was reformatory, was, probably, called

for, and beneficial ; if it was, further or mainly, intended by it to humiliate and terrify the hierarchy, it accomplished this object also. Archbishop Wareham thus continues his answer to the Petition of the Commons. “Albeit there is, by the assent of the Lords Temporal and Commons of your Parliament, *an Act passed¹ thereupon already*, the matter depending before your Majesty by way of supplication offered to your Highness by your said Commons, yet, forasmuch as we, your Grace’s humble Chaplains, the Archbishops of Canterbury and York, be bound by our oath to be intercessors for the rights of our churches ; and, forasmuch as the spiritual Prelates of the Clergy, being of your Grace’s Parliament, consented to the said Act for divers great causes moving their conscience, we, your Grace’s said chaplains, shew unto your Highness, that it hath appertained to the Archbishops of Canterbury and York, for the space of four hundred years, or thereabouts, to have spiritual jurisdiction over all your Grace’s subjects dwelling within the provinces ; and to have authority to call before them not only in spiritual causes devolved to them by way of appeal, but also by way of querimony and complaint ; and so the said Act is directly against the liberty and privileges of the churches of Canterbury and

¹ It would appear that the Archbishop’s answer was received in the 24th year of the reign, the Act having been passed in the 23rd year : that the complaints against the spirituality were communed of by the Commons in the 21st year, but that their petition was not delivered to the king till the 23rd year. In a recent history it is stated that this Act obtained the king’s consent two years later than the Archbishop’s answer which is placed under the year 1529, in the 21st year of the reign : the petition of the Commons is, also, there represented to have been delivered in the first week of the first Session of the Reformation Parliament. According to Hall, on the last day of April in the twenty-fourth year of the reign, the king declared to the speaker and certain of the Commons “how they had exhibited a book of their grievances, *the last year*, against the spirituality, which, at their requests, he had delivered to his spiritual subjects to make answer thereto ; but he could have no answer till *within three days last past*, which answer he delivered to the Speaker.” Lord Herbert states that the Petition of the Commons was presented in the twenty-third year. Hall fixes the date of its delivery to the 18th of March in that year ; he says that the Commons “*began to commune* of their grievances wherewith the spirituality had oppressed them,” as soon as they were assembled in 1529, the 21st year of the reign.

York ; and what dangers be to them which study and labour to take away the liberties and privileges of the church, whoso will read the general Councils of Christendom and the Canons of the Fathers of the Catholic Church, shall soon perceive. And, further, we think verily that our churches, to whom the said privileges were granted, can give no cause why the Pope himself (whose predecessors granted those privileges) or any other (the honour of your Grace ever except) may justly take away the same privileges from our churches, though we ourselves had greatly offended in abusing the said privileges. But when in our persons we trust we have given no cause to lose those privileges, we beseech your Grace, of your goodness, and *absolute power* to set such orders in this behalf, as we may enjoy our privileges lawfully admitted so long."

By an Act of this Session conveyances of real property for obits and other devotional purposes, though made to unincorporated trustees, and so not strictly gifts in mortmain, were prohibited (23 Hen. VIII. c. 10). This Act has been treated of in a previous chapter; its ostensible gravamen is represented, in its Preamble, to be the loss of feudal dues by the King and Lords. The Act, however, provided against the possible loss of these dues, by drying up a copious source of profit to the Clergy ; whilst it established a principle which was shortly to be applied, on a more extensive scale, to the monasteries, that the devotional objects of institutions were not paramount to secular policy, and even that it might be a ground for their abandonment, if they conflicted with the interests of the King and the Lords.

An Act of this Session for the punishment of Clerks convict breaking prison (23 Hen. VIII. c. 11), has been considered in a former chapter ; it may be noticed in this place, as impairing the Benefit of Clergy, even when claimed by real clerks. They might, under circumstances, be adjudged felons and be deprived both of clergy and sanctuary, might be degraded by their Ordinaries, and be transmitted to the Court of King's Bench to

receive sentence of death. This was the first of the Acts of this Parliament which affected the liberty and lives of the clergy. Although applicable only to reverend criminals, it may be regarded as an innovation levelled at the whole clerical order such, as Hall observes, it had been dangerous to talk of, until, “about the commencement of the present Parliament, when God illumined the King's eyes.”

The last Act ecclesiastical or secular of this Session related to the Annates, or first fruits of dioceses paid by Archbishops and Bishops to the Pope, upon obtaining the requisite Bulls for their investitures (23 Hen. VIII. c. 20). In the Preamble of this Act it is recited, that “Forasmuch, as it is well perceived, by long approved experience, that great and inestimable sums of money have been daily conveyed out of this realm, to the impoverishment of the same; and, especially such sums of money as the *Pope's Holiness*, his predecessors, and the Court of Rome, by long time have heretofore taken of all and singular those spiritual persons which have been named, elected, presented, or postulated to be Archbishops or Bishops within this realm of England, under the title of Annates, otherwise called First Fruits; which Annates or First Fruits have been taken of every Archbishopric or Bishopric within this realm, by restraint of the Pope's Bulls, for confirmations, elections, admissions, postulations, provisions, collations, dispositions, institutions, installations, investitures, orders, holy benedictions, palls, or other things requisite and necessary for the attaining of these their promotions; and have been compelled to pay, before they could obtain the same, great sums of money, before they might receive any part of the fruits of the said Archbishopric or Bishopric whereunto they were named, elected, presented or postulated; by occasion whereof, not only the treasure of this realm hath been greatly conveyed out of the same, but, also, it hath happened, many times, by occasion of death unto such Archbishops or Bishops so newly promoted within *two or three years* after his or their consecration, that his

or their friends, by whom he or they have been holpen to advance and make payment of the said Annates, have been thereby utterly undone and impoverished. And, for because the said Annates have risen, grown, and increased by an *uncharitable custom*, grounded upon no just or good title, and the payments thereof obtained by restraint of Bulls, until the same Annates have been paid, or surety made for the same; which declareth the said payments to be enacted and taken by constraint, against all equity and justice. The noblemen, therefore, of this realm, and the wise, sage, politic Commons of the same, considering that the Court of Rome ceaseth not to tax, take, and exact the said great sums of money, under the title of Annates, as is aforesaid, to the great damage of the said Prelates, and this realm. Which Annates were first suffered to be taken within this realm for the only defence of Christian people against the Infidels, and now they be claimed as mere duty, *only for lucre, against all right and conscience*. Insomuch that it is evidently known, that there hath passed out of this realm unto the Court of Rome, sithen the second year of the reign of the most noble Prince of famous memory, King Henry the Seventh, unto this present time, under the name of Annates, paid for the expeditions of Bulls of Archbishoprics, and Bishoprics, the sum of eight hundred thousand ducats, amounting, in sterling money, at least to eight score thousand pounds, besides *other* great, and intolerable sums which have yearly been conveyed to the Court of Rome, by many *other* ways and means, to the great impoverishment of this realm. And albeit that our said Sovereign the King, and all his natural subjects, as well spiritual as temporal, been as *obedient, devout, catholic* and humble children of God, and *Holy Church* as any people be within any realm christened; yet the said exactions of Annates be so intolerable and importable to this realm, that it is considered and declared, by the *whole body* of this realm now represented by all estates of the same assembled in the present Parliament, that the King's Highness,

before Almighty God, is bound, as by the duty of a good Christian Prince, for the conservation of the good estate and commonwealth of this his realm, to do all that in him is, to obviate, repress, and redress the said abusions and exactions of Annates. And because that divers Prelates of this realm, being now in extreme age, and other debilities of their bodies, so that, of likelihood, bodily death, in a short time, shall, or may succeed unto them; by reason whereof, great sums of money shall, shortly after their deaths be conveyed unto the court of Rome, for the unreasonable and uncharitable causes aforesaid, to the universal damage, prejudice, and impoverishment of this realm, if speedy remedy be not in due time provided."

It was, thereupon, enacted, that the payment of Annates was to cease; and that if any Bishop presented to the Court of Rome by the King should be letted or delayed, through withholding of Bulls, he should be consecrated by his Archbishop, provided the King presented him to the Archbishop for that purpose; and that every Archbishop presented by the King, who should be so letted or delayed, should be consecrated by two Bishops to be appointed by the King, upon the King's presentation; that, notwithstanding no Annates were payable, £5 per cent. of the annual values of Archbischoprics and Bishoprics was to be paid by the persons presented to them, for the writing of Papal Bulls, and sealing them with lead.

There follows a remarkable clause that "Forasmuch as the King's Highness, and this his High Court of Parliament neither have, nor do intend to use in this, or any other like cause, any manner of extremity or violence, before gentle courtesy and friendship, ways and means first approved and attempted, and without a very great urgent cause and occasion given to the contrary; but, principally, coveting to disburthen this realm of the said great exactions and intolerable charges of Annates, have, therefore, thought convenient to commit the final order and determination of the premises, in all things, unto the King's

Highness. So that, if it may seem to his high wisdom and most prudent discretion meet to move the *Pope's Holiness* and the Court of Rome, amicably, charitably, and reasonably to extinct and make frustrate the payments of Annates, or else, by some friendly, loving, and tolerable composition to moderate the same, that then those ways or compositions taken, concluded and agreed between the Pope's Holiness and the King's Highness, shall stand in strength, force and effect of law, inviolably to be observed." The King, at any time before Easter 1533 (the Act was passed in 1531-2) was authorized to declare, by his Letters Patent, "whether the premises, or any part, clause, or matter thereof shall be observed, obeyed, executed, and take effect, as an Act or Statute of this present Parliament, or not." If no redress could be had by such amicable means; then, notwithstanding any Papal excommunications or interdictions, all Sacraments, divine services and "things necessary for the health of the soul of mankind" should continue to be administered.

It was, most probably, at the time, a great source of strength to the measures of the Reformation Parliament, it contributes much, at the present day, to their favourable acceptance, that they remedied real and oppressive abuses both on the part of the Popes, and of the Anglican Church. All must deem the exaction of Annates a useless burden and a dishonour to the kingdom. The Parliament declare that it was the King's duty, "before Almighty God, as a good Christian Prince" to redress the abuse of Annates, a sentiment, which, although expressed in somewhat inflated terms, will be approved of; but the King's blindness to this holy duty, until his eyes were illumined, after an opacity of twenty years, is the more marvellous. The nation appears to have been singularly impassive, in the time of the King and his ancestors, under an imposition claimed "only for lucre, against all right and conscience."

It is remarkable what a low and mercenary view of the sub-

ject is taken in the Preamble. In its beginning, middle, and end it is made to harp on the mischief of money being taken out of the realm, an argument adapted to popular prejudices. It would appear that the Parliament thought that too much stress could not be laid on this plausible ground of the Act; accordingly the hard case of the *friends of Bishope* dying within *two or three* years of their presentation is brought forward; and, without delicacy to the Spiritual Lords concurring in the Act, the proximate *likelihood* of the *bodily deaths* of the more aged among them is broadly intimated. The Parliament, in displeasing the Pope, took occasion to declare, that they continued *obedient* children of holy Church; and it was thought necessary to explain that the *whole body* of the realm were represented by the Parliament that found fault with Annates. The appellation of *Bishop of Rome* had not yet, in Parliamentary language, superseded that of the *Pope's Holiness*.

By the enacting part of the Act, Annates are very properly, but not early enough, abolished. It will be observed, that the presentation of Archbishops and Bishops is assumed by the King. The disregard of contingent excommunications and interdicts was a just and spirited, but not an *obedient* and *catholic* defiance of the Holy Church. The extinction of Annates was calculated to be popular with the Clergy, to whom it held out a boon; it was not till a later Act that what originated in an *uncharitable custom*, and was against *all right and conscience* for the Pope to receive, was judged proper for the King's use.

The clause of *delegated legislation*, whereby the Act was to speak only if it had a voice given it by the King, who was empowered to avoid it altogether, or any part of it, was a proceeding quite beyond the legitimate powers of Parliament; one to the making of which the *whole body* of the country could not be construed to have given, representatively, their consent; it was a violation of the fundamental principles of the Constitution.

It has been naively suggested that the Parliament in giving

the King an unlimited and unconstitutional power over a statute, is to be commended for its “spirit of equity, and an absence of passion and hysterical excitement.” It may be thought, on the other hand, that the statute was a device of the King for chaffering with the Pope. *Importable* and *intolerable* as the Annates were represented by the Parliament to be, the King reserved the power of continuing them or not in whole or in part, according to *amity, charity, and reason*. Considering that the King was, at that moment, strenuously urging the Pope to stultify his infallible Predecessor, it may be conjectured, with probability, that the Act was made ambulatory in order to outweigh the scruples of his Holiness in *foro conscientiae*, and that the provisional loss of Annates, which the King, apart from his Parliament, had power to reduce or annul, was meant for a counterpoise to spiritual impediments.

Lord Herbert, in his history, makes the following remarks on the Act under review. “This Act being passed, our King made use thereof to terrify the Pope, which took effect, as I find by our ambassador’s letters from Rome. Though, by them, (as they were instructed from hence) his Holiness was told that our King had reserved the whole business to his own power and discretion; which appeased the Pope awhile.”

Session IV. A.D. 1532—3.

Lord Herbert thus commences his history of the year in which the fourth Session of the Reformation Parliament was held. “I shall begin this year’s history with the affairs of Queen Catherine; who, by her proctor at Rome, assisted by the advice and power of the imperialists, negotiated puissantly with the Pope. So that notwithstanding our King’s indignation for her prosecuting him in this manner, she urged still her *appeal*, beseeching the Pope to cite the King, by himself or proctor, to appear.”

It would appear, from this authority, that at the meeting of the Parliament, for the fourth Session, Queen Catherine's appeal to Rome was a prominent obstacle to her divorce. There was another reason why, at this juncture, the Queen's appeal was an object of Henry's solicitude. The fourth Session of the Parliament commenced on the fourth of February; the King had been secretly married to Anne Boleyn in the January or November preceding: the Parliament was prorogued on the 7th of April, and Cranmer's sentence of divorce was pronounced in the ensuing May. These dates appear to supply a cogent reason why the King should have availed himself of the aid of Parliament, in the present Session, to corroborate his marriage, and, prospectively, the Archbishop's sentence, by a new law of ecclesiastical appeals that might gag the mouth of an appellant Queen.

Accordingly an Act was passed on the subject (24 Hen. VIII. c. 12), in which it is recited that "By divers and sundry old authentic histories and chronicles it is manifestly declared that this realm of England is an *empire*, and so hath been accepted in the world, governed by one supreme *Head* and King, having the dignity and royal estate of the *imperial* Crown of the same; unto whom the *Body Politic*, compact of spirituality and temporality, was bound to bear a natural and humble obedience; that the King was furnished, by the goodness and sufferance of God, with plenary, whole, and entire power, pre-eminence, authority, prerogative and jurisdiction to yield final determination to *all manner of folk*, resiants, or subjects, in all causes without restraint, or provocation to any foreign Princes or Potentates of the world. The body spiritual thereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted, and shewed by that part of the said body politic, called the spirituality, now being usually called the English Church, which always hath been reputed, and also found, of that sort, that both for knowledge, *integrity*, and sufficiency of number,

it hath always been thought, and is also, at this hour, sufficient and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties, as to their rooms spiritual doth appertain; for the due administration thereof, and to keep them from corruption and sinister affection, the king's most noble progenitors, and the antecessors of the nobles of this realm, have sufficiently *endowed* the said Church both with honour and possessions. And the *law temporal* for trial of lands and goods, without rapine or spoil, was and yet is administered, adjudged, and executed, by sundry judges and ministers of the temporalty: and both their authorities and jurisdictions do *conjoin* together in the due administration of justice, *the one to help the other.*"

It is then recited that the King's ancestors had made laws to keep the *imperial* crown of this realm "from the annoyance of the See of Rome, yet, that, nevertheless, sithen the making of the said good statutes and ordinances, divers and sundry inconveniences and dangers *not provided for plainly* by the said former Acts, statutes, and ordinances have arisen and sprung by reason of *Appeals* sued out of this realm to the See of Rome, in causes *testamentary*, causes of matrimony and *divorces*, right of tithes, oblations and obventions, not only to the great inquietation, vexation, trouble, cost, and charges of the *King's Highness*, and many of his subjects and resiants of this his realm, but also to the *great delay and let* to the true and speedy determination of the said causes, for so much as the parties appealing to the said Court of Rome *most commonly do the same for delay of justice*. And, forasmuch, as the great distance of way is so far out of this realm, so that the necessary proofs, nor the true knowledge of the cause, can neither be so well known, nor the witnesses there be so well examined, *as within this realm*, so that the parties grieved by means of the said Appeals be, most times, without remedy."

It was, therefore, enacted, that “all causes testamentary, causes of matrimony and divorces, rights of tithes, oblations, and obventions *already* commenced, moved, *defending*, being, happening, or, hereafter, coming in contention, debate or question, whether they concern the King our Sovereign Lord, his heirs or successors, or any other subjects or resiants of *what degree soever they be*,” should be determined by the King’s authority, and not elsewhere, “without respect to any custom, use or sufferance;” that excommunications and interdictions from Rome touching the causes aforesaid were to be disregarded; that every person prosecuting an Appeal contrary to the Act, “of what estate, degree, or condition soever he or they be,” should be subject to the penalties of a *Præmunire*; that an order prescribed in the Act should be observed with regard to appeals within the realm, according to which suits commenced before an archbishop were to be determined by him without further appeal; that in causes touching the King, the party grieved might appeal from any ecclesiastical court to the “spiritual Prelates, and other the Abbots and Priors of the Upper House, assembled and convocate by the King’s writ in the Convocation being, or next ensuing, within the province or provinces where the same matter of contention is, or shall be begun.”

Appeals to Rome from the English Ecclesiastical Courts were an undoubted public grievance, inconsistent with national independence, a frequent cause of the perversion of justice, a constant occasion of unnecessary delay and expense. On this point the only question is, whether the eyes of the King were not *illumined* on the subject until his quarrel with the Pope, or, whether, until the date of that quarrel, he was willing to connive at the injustice and the fleecing sustained by his subjects.

The tenor of the Act under review is remarkable. Its lengthened preamble and justificatory arguments, and, indeed, its very existence, indicate that, in fact, it is not declaratory, but introduced a very important innovation; a circumstance which is

implied in an incidental statement, that the mischief of Appeals to Rome had not been “provided for plainly” by former statutes. However, the Preamble, passing over antagonistic modern instances, soars to the testimony of *old chronicles*, to prove that England is an *Empire*; whence it is represented, that the illegality of Appeals to the Pope might be logically deduced. The Parliament, however, not being satisfied with its own sophistry upon this point, and deeming it of importance to make it appear that the Act was expedient upon general grounds, and not merely as a counter-move to the Queen’s Appeal, adduce some arguments in support of the old chronicles and their corollary. It is alleged that the ecclesiastical judges were competent to try appeals, and their *integrity* is vouched for, which the same Parliament had, for other purposes (as is seen in the present chapter of this work), impeached. The *endowments* of the Church are brought forward to shew that clerical judges had, in this particular instance, if not in all other cases, a sufficient guarantee to ensure them from *corruption* and *sinister affection*. Again, it is pointed out that there is no appeal to the Pope from the *temporal Courts*; whence, from their being *conjoined*, in the administration of justice, with the spiritual Courts, it plainly appeared, in the opinion of the Parliament, that there ought to be no appeal to the Pope from either. Further, a general slur is cast on Appeals to Rome, wherein, probably, the Queen’s Appeal was glanced at, that they were sued “most commonly for delay of justice.” Lastly, the delay, expense, and perversion of justice consequent on Appeals to Rome are set forth, which, standing alone, afford ample ground for their abolition. It is curious to observe how the mention of causes of *divorce*, though the principal object of the Act, is introduced amongst others, as if incidentally, thus, “causes testamentary, causes of matrimony and *divorces*, rights of tithes, oblations, and obventions.” It was left to a later Session, when it was no longer an object to point especially to appeals in causes of

divorces, to prohibit "all manner of Appeals to the *Bishop of Rome* of what nature or condition soever."

The Statute, in expressly affecting Appeals in progress, and already before the Court of Rome, went a length which it was not probable they would have gone, unless to reach the case of the Queen, who seems to have been alluded to under the expression of "persons of what degree soever." It has been suggested that the cause relating to appeals in cases touching the King was "*obviously* intended to give the Queen the utmost advantage which was consistent with the liberties of the realm." It may, however, be regarded as illusory, seeing what the Prelates, Abbots and Priors of the Upper House of Convocation had voted, and subsequently did vote¹.

Hall mentions it as a question of the time, whether as Queen Catherine had appealed to Rome before the Act passed, her appeal were good or not? The enactments of the statute seem to have settled that matter against the Queen; but the Parliament was morally responsible for a retrospective Act, passed, apparently, for the especial purpose of frustrating her appeal.

That Henry did not hesitate to adopt the basest and most unfair means for accomplishing his divorce from Queen Catherine is manifest from his deceitful proposal of mutual vows of chastity, which was adverted to in treating of the Royal Succession. An attempt, on his part, to prevent her communicating with her family, appears from the following letter, in Ellis' *Collections*, written by a Secretary of the King to Wolsey, with

¹ The writer referred to in the text observes of this clause, that the English Church *might* have saved the Queen if her cause was just; but that "if Catherine herself had thought first or chiefly of justice, she would not, perhaps, have accepted the arbitration of the English Convocation; but, long years before, she would have been in a cloister." He begs sympathy for the Queen, but entreats his readers "not to trifl with history by confusing a political necessity with a moral crime." Others may think that the confusion in this case arises from an attempt to palliate a moral crime by a political necessity, and may be of opinion that the historian's mandate, "Get thee to a nunnery," appears as irrational and unfeeling as the like when addressed to Ophelia.

the object of kidnapping one Françoise Philip, described as sewer of the Queen, on his way to Spain.

"The King's Highness doth *dissymule*, and because it was thought dangerous for him (Françoise) to pass through France, or, at this season of the year, by the seas, the King hath said, that in case Françoise be taken by the enemy, his Highness will redeem him and pay his ransom. And this policy the King useth to bring Françoise in more firm confidence. But his pleasure is, and also he desireth and prayeth your Grace to use such policy, as, notwithstanding any salve-conduct that the said Françoise shall obtain, either by your Grace's means or any other, of the French King, he may be let, empeshed, and detained in some quarter of France, so that it be not in any wise known that the said let, arrest, or deprehension should come by the King, by your Grace, or any of the King's subjects."

Session V. A.D. 1533—4.

Since the last Session of the Reformation Parliament, which terminated on the 7th of April, A.D. 1533, several important transactions bearing on Henry's quarrel with the Pope had transpired. Immediately after the prorogation Sir Thomas More resigned the seals. Sentence for the divorce of Henry from Queen Catherine was pronounced by Cranmer on the 23rd of the next May. On the 1st of June, Anne Boleyn was crowned, as Lord Herbert writes, "with much solemnity, that the murmur of such as objected against the irregularity of the King's proceedings might be hidden and covered in the pomp." On the 29th of June the King appealed from the Pope to a General Council¹.

¹ The Appeal contains the following clause: "Preamissaque per nos solemni et expressa protestatione, quod non est nostra intentionis, per infra scripta, aliquid contra sanctam Catholicam et Apostolicam Ecclesiam, sacrosanctaeque sedis Apostolice auctoritatem divinitus concessam, alias quam officii boni et Catholici Principis fuerit, dicere, asserere, seu moliri, et si secus a nobis agitari contigerit, id revocare, et emendare atque Catholico corrigere prompti erimus et parati, quamcito nobis de hoc aperte constiterit, et legitime fuerit persuasum." No less than

The Parliament met, for its fifth Session, on the 15th of January, A.D. 1533-4, which closed on the 30th of March, A.D. 1534. An important transaction had occurred at Rome, on the previous 23rd of March, but the news of it did not arrive in England until after the prorogation. Negotiations had not been intermitted between Henry and the Pope, and, at the termination of the Session, the result of proposals which had been sent from England was expected; laws were confined to a partial and provisional breakage of the bonds of Rome.

These events may appear to have had an influence on the legislation of the Session. The *Pope's Holiness* was to abide by his transformation into the *Bishop of Rome*; the power of upholding his prestige by means of prosecutions for heresy, was put under surveillance; the King's authority of dispensing with the non-residence of the clergy was enlarged; the canon law, past and future, was placed at the feet of the Sovereign; Archbishops and Bishops were no longer to require Bulls for their appointments from the Pope; the Papal See was assailed in vital points, by a transfer of its power of granting dispensations, and the abolition of multifarious emoluments: a step was taken towards the confiscation of Monasteries, by means of attainders of Abbots. As negotiations with the Pope were still pending, the Act of the Session which annulled his dispensations, his Peter-pence, and other ancient exactions, was left in the whole, and in each part, at the disposal of the King, to whom it was calculated to be of use in his chafferings.

The first ecclesiastical Act of this Session was one relating to *heresy*, which has been considered in a previous chapter (25 Hen. VIII. c. 14). Its two prominent features were a declaration that speaking against the Bishop of Rome was not heresy, and that trials for heresy should be held in open court and in an

twenty-five processes of the Pope, each of them susceptible of seven variations, are included in the appeal; the more stringent of the processes were, *excommunicando*, *interdicendo*, *amovendo*, *anathemisando*.

open place. The first of these provisions, from its being the only sequel of an elaborate preamble setting forth the mischiefs of uncertainty in the definition of heresy, shews that the object of the Act was not to remove the multiform uncertainties attaching to that definition, but to prevent the offence of heresy being made a pretext for destroying the partizans of the King by ecclesiastical judges suspected of acknowledging allegiance to the Pope. The second provision, that for open Courts, was a very beneficial improvement in ecclesiastical procedure; but, it is not improbable that the main object designed by it was to prevent ecclesiastical judges from condemning the Pope's revilers for heresy in a corner.

The next ecclesiastical Act of the Session was for the creation of new chaplaincies with non-residence (25 Hen. VIII. c. 16). It was thereby enacted that every Judge of the King's Bench and Common Pleas, the Chancellor, and Chief Baron of the Exchequer, the King's Attorney and Solicitor were authorised to retain in their respective houses, one chaplain having one benefice with cure of souls, on which he was allowed to be non-resident.

By this Act, the beneficial law of non-residence, which had been much weakened by the exceptions contained in it, was further undermined. But this inconvenience was overlooked, whilst the King acquired, thereby, new claims to the gratitude of his judges and law officers, and, through their influence with their chaplains, increased his own power in the Lower House of Convocation; non-residence being the reward of non-resistance.

A very important ecclesiastical Act was passed in this Session, viz. for making the King's assent requisite to Canons, and for the more general prohibition of Appeals to Rome (25 Hen. VIII. c. 19). It contains a recital, that "Where the King's humble and obedient subjects, the Clergy of this realm of England, have not only acknowledged, according to the truth, that the Convocations of the same Clergy, are, always have been, and

ought to be assembled only by the King's writ; but, also, submitting themselves to the King's Majesty, have promised, *in verbo sacerdotii*, that they will never, from henceforth, presume to attempt, allege, claim, or put in use, or enact, promulge, or execute any new canons, constitutions, ordinances provincial, or other, or by whatsoever other name they shall be called, in the Convocation, unless the King's most royal assent and licence may to them be had to make, promulge, and execute the same, and that his Majesty do give his most royal assent and authority in that behalf. And, where divers constitutions, ordinances, and canons provincial or synodal which, heretofore, have been enacted, and be thought not only to be much prejudicial to the King's prerogative royal, and repugnant to the laws and statutes of this realm, but also over much onerous to his Highness and his subjects; the said *Clergy* hath, most humbly, *besought* the King's Highness, that the said constitutions and canons may be committed to the examination and judgment of his Highness, and of two-and-thirty persons of the King's subjects, whereof sixteen to be of the Upper and Lower Houses of Parliament of the temporality, and the other sixteen to be of the clergy of this realm, and all the said two-and-thirty persons to be chosen and appointed by the King's Majesty. And that such of the said constitutions and canons as shall be thought and determined by the said two-and-thirty persons, or the more part of them, worthy to be abrogated and annulled, shall be obsolete and made of no value accordingly; and such other of the same constitutions and canons as by the said two and thirty, or the more part of them, shall be approved to stand *with the laws of God*, and consonant to the laws of this realm, shall stand in their full strength and power, the King's most royal assent being first had and obtained to the same."

It was, therefore, enacted, "according to the said submission and *petition* of the said Clergy," that the Clergy should not enact, promulge, or execute any canons, constitutions, or ordi-

nances without the royal assent, under pain of fine and imprisonment at the King's *will*.

The King was empowered to assign Commissioners, consisting of sixteen Clergymen, and sixteen temporal Peers or Commoners, to examine the Canons in force ; they were to report which of them were worthy to be preserved and which to be abolished ; the former were to be continued, provided the King assented to them, the latter were to become void. Canons, constitutions, ordinances, and synodals provincial in force at the time of making the Act, provided they were not repugnant to the laws of the realm, nor to the damage of the King's prerogative royal, were to continue in force until the Commissioners made their report, which has not been made to this day.

There were to be no Appeals to Rome from Easter, 1534, in *any matter* of contention from any Court within the realm, under the penalty of a *Præmunire*, but, all manner of Appeals were to be had in like form as had been provided by the Act of the fourth Session respecting Appeals in causes of "matrimony, tithes, oblations, obventions" (in the 24th Hen. VIII. c. 12, the causes are "testamentary, matrimony *and divorces*, tithes, oblations, obventions"). The Appeal from an Archbishop was to be to the King in Chancery, whereupon a commission was to be issued to try the Appeal, called a commission of Delegates, who have recently been suppressed by the Privy Council.

It was an important gain to the Constitution, to have extinguished the power of independent legislation which had been practised, for centuries, by the Convocation; the King, also, by the same measure, increased his authority and influence in a quarter in which he was, at the moment, anxious to promote them. The obvious and important benefit of an Act too long delayed was mixed with some alloy arising from Henry's arbitrary disposition, which was ill concealed by disingenuous representations.

It appears that, in the *third* Session of this Parliament, the King had proposed to the Bishops questions upon the matters

which are the subject of the Act under review. They answered, in the fourth Session, that they reputed their "authority of making laws to be grounded upon the Scriptures of God, and the determination of Holy Church," and that "we hope in God, and shall daily pray for the same, that your Highness will, if there appear cause why, with the assent of your people, *temper your Grace's laws* accordingly; whereby shall ensue a most sure and hearty conjunction and agreement, God being *lapis angularis*." And, with regard to requiring the royal assent to authorising the laws of Convocations, the Bishops reply that "the granting thereto dependeth not upon our will and liberty, and that we may not submit the execution of our charges and duty certainly prescribed to us by God, to your Highness's assent."

In the *fifth* Session of this Parliament, the same questions were again pressed on the Convocation; when, after a show of resistance, which was overawed, the Bishops replied, but in an altered tone, "We having our special trust and confidence in your most excellent wisdom, your princely goodness, and fervent zeal for the promotion of God's honour, and the Christian religion, and, specially, in your incomparable learning, *far exceeding, in our judgment, the learning of all other Kings and Princes* that we have *read of*, and not doubting but that the same should still continue, and *daily increase* in your Majesty; do offer, and promise here unto the same, that, from henceforth, we shall forbear to enact, promulge, or put in execution any constitutions and ordinances by us to be made in time coming, unless your Highness, by your Royal Assent, shall license us to make, promulge and execute such constitutions, and the same so made be approved by your Highness." It is then stated that, "Whereas your Highness's most honourable Commons do *pretend* that divers of the Constitutions Provincial which have been heretofore made, be not only much prejudicial to your Highness's prerogative royal, but be, also, overmuch onerous to your said Commons, we, your most humble servants, be *contented* to refer

all the said constitutions to the judgment of your Grace *only*. And whatsoever of the same shall finally be found prejudicial, and overmuch onerous, *as is pretended*, we offer and promise your Grace to moderate, or utterly to abrogate and annul the same, according to the judgment of your Grace. Saving to us always such liberties and immunities of this Church as hath been granted unto the same by the goodness and benignity of your Highness and others of your most noble progenitors, with such constitutions provincial as do stand with the laws of Almighty God and of your realm heretofore made, which we most humbly beseech your Grace to ratify and approve by your most Royal Assent, *for the better execution* of the same in times to come."—The Lower House inserted an express limitation, viz. that the submission was confined to the then reigning King; a limitation which the Parliament unfairly suppressed.

It will, probably, be thought that the answer of the Convocation is not fairly represented in the Preamble of the Act. The Clergy are stated to have *besought* the King, in consequence of Canons which they admitted to be prejudicial and onerous, to appoint Commissioners of his own selection; and that the Commission might be authorised to make void such Canons as it thought worthy to be abolished; that the Royal Assent should be indispensable for such Canons as were retained; and that all this power should be vested in an undying King, and not exclusively in a mortal King.—Whereas the Convocation treated the charge of their Canons being prejudicial and onerous, as a mere *pretence* of the Commons. The Clergy *besought* not, but were *contented* to refer their constitutions to the judgment of the King. The reference to which consent was given, was one to the King *only*; it was not left for the Commissioners to abrogate Canons. The Clergy were not contented that even the King himself should repeal Canons, but offered to moderate or annul them according to the King's judgment. The King was invited to ratify the Canons to be retained; it was not *besought*

or *petitioned* that without his Assent they should not be retained. Lastly, the Convocation surrendered its ancient authority to the reigning King personally, one House in express terms, the other by necessary implication from his wisdom, goodness, and *unread of learning*. It has been represented that the allegations in Henry's statutes derive confirmation from State Papers; this could not happen otherwise when the arrows were taken from the same quiver; but, in cases like the preceding, the variations and varnish of the copy are conspicuous by juxtaposition with the original.

The Decretals of the Popes, of whatever authority they may have been in England, are not recognised or saved by the Act; they could not have found favour with Henry, as being based on the fundamental principle of the Pope's universal Supremacy. The provisions of the Act are particularly directed to the Provincial, Synodal, and Legatine Canons. The Anglican Church had for upwards of two centuries been in the practice of enacting Provincial and Synodal Canons, without any confirmation by the Pope or Assent of the King. On the same footing stood the Legatine Canons, which bear the names of the Legates Otho and Othobon; they were enacted, in the thirteenth century, by national Councils held in the Cathedral Church of St Paul's, London.

The Ecclesiastical Canons concerned all matters incidental to the religious and moral government as well of lay as clerical members of the Church; with regard to both of whom the correctional discipline of the Ecclesiastical Courts was left unimpaired by the Act. (The King's purposes were served by constituting him, in effect, an ecclesiastical lawgiver.) The Act enabled him to prevent the enactment of any Canons which might have militated with his plans, and to keep the Clergy in subjection, by the possession of a power of totally abolishing the Canons of the Anglican Church, or such of them, in particular,

whereof he might have deemed the use disagreeable, however time-honoured.

The Act may be thought to countenance a notion that the King's Assent might impart to Canons the same potency as Statutes; as to which, Blackstone, in his Commentaries, has said, in treating of the Canons enacted by the Clergy in Convocation, under James I., which were sanctioned by the King's charter, but not confirmed in Parliament, that "it had been solemnly adjudged, upon the principles of law and the constitution, that, where Canons are not merely declaratory of the ancient common law, but are introductory of new regulations, they do not bind the laity, whatever regard the Clergy may be bound to pay them."

The power vested in Commissioners appointed by the King of repealing whatsoever Canons they thought proper, and that of enabling the King, by withholding his Royal Assent, to annul any Canon or Canons which his Commissioners had spared, was an unwarrantable act of *delegated legislation*.

The next Act of this Session was, like the preceding, ecclesiastical; it prescribed the mode of appointing Archbishops and Bishops (25 Hen. VIII. c. 20); it also confirmed the abolition of Annates. In the preamble of this Act, the former one concerning Annates is detailed. It is there stated that "Albeit the Bishop of Rome, otherwise called the Pope (the expression, in the former Act, was "Our holy Father, the Pope, and the Court of Rome"), hath been informed and certified of the effectual contents of the said Act, to the intent that, by the same gentle ways, the said exactions might be redressed and reformed, yet, nevertheless, the said *Bishop of Rome* hitherto hath made none answer of his mind therein to his King's Highness, nor devised, nor required any reasonable ways to and with our said Sovereign Lord for the same," wherefore the King, by his letters patent, had confirmed the Act for abolishing Annates.

It is then recited, that “Forasmuch as in the said Act it is not plainly and certainly expressed in what manner and fashion Archbishops and Bishops shall be elected, presented, invested and consecrated within the realm, and in all other the King’s dominions.” A mode of appointing Archbishops and Bishops by *congé d’elire* is then prescribed, which is that now in force.

The mode of appointing Archbishops and Bishops antecedently to this Act is exhibited in letters patent of the date of the 2nd of May in the 25th year of the King, or about ten months before its passing; these letters patent were executed subsequently to the Act for abolishing Annates, yet previously to that Act being ratified by the King. The Record relates to the remarkable appointment of Cranmer, by the Pope, to the Archiepiscopate of Canterbury, viz. “Cumque Prior et Conventus Ecclesiæ Metropolitanæ post mortem nuper Archiepiscopi, licentia nostrâ prius obtentâ, reverendissimum in Christo Patrem, Thomam Cranmer, nunc Ecclesiæ Cathedralis Cantuariensis Archiepiscopum, in suum eligerunt Archiepiscopum et Pastorem, Sanctissimusque Dominus Summus Pontifex Clemens Papa modernus electionem illam acceptaverit, et confirmaverit, Ipsumque sic electum Archiepiscopum prædictæ ecclesiæ Cantuariensis, præfecerit, et pastorem, sicut per Literas Bullatas ipsius Summi Pontificis nobis inde directas nobis constat.”

It would appear from Cranmer’s appointment, that the Pope ostensibly nominated to vacant sees, after an election; virtually, however, there was no free election, and the Pope adopted the nominee of the King. By the Act, the agency of the Pope in the matter was dispensed with; and, notwithstanding a free election had been guaranteed by Magna Charta, the King’s nominee was to be elected, invested, and consecrated, under the penalties of a *Præmunire*. Thus, there has been perpetuated, in this country, on the face of the Statute-book, in one of the most solemn and important of ecclesiastical transactions, an illusory fiction, and a mockery of free choice.

A curious *cuffing* (to use Lord Coke's expression) of statutes occurred with regard to the provisions of the statute under review touching the *congé d'elire*. It was moved in a Committee of Lords and Commons, in the fourth year of James I., that all the recently elected Bishops had been illegally appointed by *congé d'elire*; and, moreover, that even if their appointments were good, their seals and the proceedings of their courts were contrary to a statute of Edward VI. The King referred the matter to the Judges and Attorney-General for a report. It appeared, in the course of the arguments, that the statute of the twenty-fifth of Henry VIII. under review, had been repealed by one of Edward VI. which abolished the *congé d'elire*, and substituted donations by letters patent, providing, at the same time, that the King's arms should be set in all seals of ecclesiastical courts. The statute of Edward was repealed by three statutes, two of which had been, in their turn, repealed, the unrepealed one repealing it only by implication. It was held that the repealing statute of Edward VI. was in the condition of "a man bound by several cords, one of which only had been untied." Lord Coke, who reports the case, was not satisfied with this decision, but makes the following marginal annotation upon it, viz. "Note, the statute of Edward VI. is still in force; it is not repealed but by *implication*, which can never make void a positive law: this argument for its repeal smells of court flattery."

The history of the statute under review is agreeably illustrated by an antique seal, of which a *fac simile* is depicted in the *Archæologia*, accompanied with a tract on the subject by Sir William Blackstone, who presented the seal to the Antiquarian Society. He was of opinion that the seal, which bears the royal arms of Edward VI., and an inscription 'Sigillum : Regiae : Magistatis : Ad : Causas : Ecclesiasticas,' was made in obedience to the Statute 1 Edward VI. c. 2, repealed by that of 1 Mary, Stat. 11, c. 2 (one of the above repealing and repealed Acts); and that no such seals were made except in the interval between

those two statutes. Thus the seal presented by Blackstone to the Antiquarian Society is a memorial of a period during which the statute of Henry VIII. under review was not in force, and that of Edward VI. was in the ascendant; whilst its rarity indicates that this period was of very brief duration.

As the statute for the home appointment of Bishops had immediately succeeded that for requiring the King's Assent to Canons, and a general prohibition of Appeals to Rome, so it was itself next followed by one for lopping off a multitude of petty exactions which the Pope had been in the habit of levying, and the loss of which was calculated to inflict a palpable hit on his Holiness (25 Hen. VIII. c. 21). The following is the recital of the Act. "Most humbly beseeching your most royal Majesty, your obedient and faithful subjects, the *Commons* of this your present Parliament, assembled by your *most dread* commandment, that, where the subjects of this your realm, and of other countries and dominions being under your *obeisance*, by many years past have been, and yet be, greatly decayed and impoverished, by such intolerable exactions of great sums of money as have been claimed and taken, and yet continue to be claimed and taken out of this your realm, and other your said countries and dominions by the *Bishop of Rome, called the Pope*, and the See of Rome, as well in pensions, causes, peter-pence, procurations, fruits, suits for provisions, and expeditions of Bulls for Archbishoprics and Bishoprics, and for delegacies and rescripts in causes of contentions and appeals, jurisdictions legatine, and, also, for dispensations, licences, faculties, grants, relaxations, writs called *perinde valere*, rehabilitations, abolitions, and other infinite sorts of Bulls, Briefs, and instruments of sundry natures, names, and kinds, in great numbers heretofore practised and obtained otherwise than by the laws, laudable usages, and customs of this realm should be permitted, the specialties whereof being over long, large in number, and tedious here to be particularly inserted. Wherein the Bishop of Rome

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hath not been only to be blamed for his *usurpation* of the revenues, but also for his *abusing and beguiling* your subjects, pretending, and persuading them, that he hath power to dispense with all human laws, dues, and customs of all realms, in all causes which be called spiritual, which matter hath been usurped and practised by him and his predecessors, for many years, in great derogation of your *imperial* crown, and authority royal, contrary to right and conscience. For where this your Grace's realm recognizing no superior under God, but only your Grace, hath been and is free from subjection to any man's laws, but only to such as have been devised, made, and obtained within this realm, for the wealth of the same, or to such other as by sufferance of your Grace and your progenitors, the people of this your realm have taken as their free liberty, by their own consent to be used amongst them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of any laws of any foreign Prince, Potentate, or Prelate, but as to the ancient and customed laws of this realm, originally established as laws of the same, by the said reference, contents, and custom, and none otherwise. It standeth, therefore, with natural equity, and good reason, that in all and every such laws human made within this realm, or induced into this realm by the said sufferance, contents and custom, your Royal Majesty and your Lords Spiritual and Temporal, and Commons, have full power and authority not only to dispense, but also to *authorize some elect person or persons to dispense with those and all other human laws of this your realm, and with every one of them* as the quality of the persons and matter shall require; and also the said laws, and every of them, to abrogate, annul, amplify, or diminish, as it shall seem unto your Majesty, and the Nobles and Commons of your realm, as by divers good and wholesome Acts of Parliament made and established, as well in your time as in the times of your most noble progenitors may plainly appear. And because it is now, in

these days present, seen, that the state, dignity, sovereignty, reputation and authority of the imperial crown of this realm, by the long sufferance of the said unreasonable and uncharitable usurpations and exactions practised in the times of your most noble progenitors, is much and sore decayed and diminished, and the peoples of this realm thereby impoverished, and so, or worse, be likely to continue, if remedy be not therefore shortly provided."

It was, therefore, enacted, that "forasmuch as your Majesty is Supreme Head of the Church of England, as the Prelates and clergy of your realm, representing the said Church, in their synods and convocations have recognized," no more impositions should be paid to the Bishops of Rome, and that he should not be sued to for any licences or dispensations; that, for the future certain dispensations, licences, faculties, and other writings, might be granted by the Archbishop of Canterbury to the King, and to other persons; save that in matters unwonted to be licensed, it should be necessary to procure the King's approbation. The King might, by his writ, compel the Archbishop to grant licences, faculties, or dispensations¹.

The King was to have the sole power of *visiting*, by commission, monasteries, colleges, and other religious places; and he might *reform* all manner of indulgences and privileges within the realm heretofore obtained from the Bishop of Rome.

It was provided that the Act should not be so interpreted "that your Grace, your nobles, and subjects, intend by the same to decline or vary from the congregation of Christ's Church in any things concerning the very Articles of the Catholic *faith* of Christendom, or in any other things declared by Scripture

¹ A stipulation for the payment of a papal dispensation appears in several marriage articles of the nobility about this period, as by an indenture dated 1505, on the marriage of the Earl of Derby with Lord Hastings's daughter, in which the earl covenants "at his costs and charges to obtain the license of our Holy Father, the Pope at Rome, for the marriage."—Grimaldi's *Origines Genealogica*, where see concerning the repositories of dispensations, and their genealogical use.

and the holy word of God necessary for your and their sal-vations."

The Act was not to take effect till the next Feast of St John Baptist, unless the King before that Feast "declare that it is his pleasure that it shall begin and take effect at any time before the Feast. And at all times before that Feast, the King had power "to abrogate, annul, and make void the Act, or any part of it;" the Act, so far as it is unrepealed, was to take effect from the Feast.

The abolition of the numerous Papal exactions specified in the Act was due to the interests and honour of the nation. They were oppressive badges of subjection and degradation, and were, for the most part, founded on obsolete and superstitious grounds, the most remarkable of them, Peter-pence, savouring of the Crusades. Papal Dispensations, in particular, tended to impair the rules of law and obligations of morality, and to submit to the conscience of one man the consciences of mankind. No length of usage could furnish valid excuse for the retention of practices so inimical to reason and liberty. It is probable that it was not without some regard to the pecuniary relief afforded, that the laity of England proved themselves staunch reformers; for this reason, and, it is to be hoped, on higher grounds, they must have hailed the Act as a national boon, without being curious about the motives in which it originated.

In the Preamble, it is represented that the Popes were exclusively censurable for all the abolished exactions; whereas the Kings and their clerical ministers, and Henry VIII. himself during twenty-five years, had been accessories to this Papal plundering. The declaration that no laws had any force in England, save what had been enacted by English Parliaments, or sanctioned by English usage, expressed a sound constitutional doctrine; but this was somewhat diluted by fantastical references to the King's *imperial* crown, and to the title of the Supreme Headship of the Church, as recognized in Convocation, that

recognition having been obtained with a qualification which is suppressed, and under the terror of a *Præmunire*. Besides the Papal exactions in question had been sanctioned in this country by “long use and custom.” The objection was not, as represented in the preamble, that they had no legal validity, but that they had become, whatever they might originally have been, useless, oppressive, and mischievous, and, therefore, fit subjects for the amputating knife of the Legislature.

After a prolix argument to prove that Papal Dispensations and exactions did not stand on any legal footing, a constitutional truism is declared, that the Parliament has power to annul, amplify, or diminish every law. But this declaration has a statement appended to it which announces a very erroneous and dangerous principle, viz. that “Your Royal Majesty and the Nobles and Commons of your realm have full power and authority to authorize *some elect person or persons to dispense with these and all other human laws of this your realm, and every one of them.*” This daring proposition was, probably, intended as a prelude to giving the King a special power of dispensing with the Act in which it was enunciated. It is to be classed with other instances of *delegated legislation*, but is perhaps, the most flagrant of them, for it implies a transfer of the power of unmaking laws of whatever kind, and in whatever number, and that not to the King only, or any Solon in whose hands, if of any one, the laws of the country might safely be placed, but to any “person or persons” whom the Parliament might elect.

The enacting clauses for the annulling of Papal Dispensations and exactions were highly salutary; but it may be a question, whether too large a power of granting Dispensations be conferred on the King, Archbishops, and other Prelates; in which respect it may be suspected that the Parliament had less dislike to the abuse of Dispensations than to the quarter from which they emanated. The King’s power of reforming “indulgencies and privileges theretofore obtained of the See of

Rome and the abuses in such as were reasonable for the honour of God," admitted of arbitrary exercise. The right conferred on the King, to "visit or vex any Monasteries, Abbeys, Priories, Colleges, Hospitals, Houses or other places religious," tended to diminish the Pope's authority over the Monastic orders, whilst it suspended over their institutions all the baleful consequences likely to ensue from the Reports of Commissioners, such as might have been expected to be, and such as were, appointed by the King and Cromwell.

The Proviso, that the Parliament did not intend to "decline or vary from the congregation of Christ's Church, in any things concerning the very articles of the Catholic faith of Christendom," is one proof among many, that the Reformation in the reign of Henry VIII. was legal and political; of which the Reformation in Religion that followed after the demise of the King was a providential, and not an intentional, consequence, a result to which the Reformation Parliament, in this proviso, declared themselves repugnant.

The provisional character of this Act, like that concerning the Annates, shows the great power of the King over the Parliament; the Pope was to be allowed to enjoy what he wrung from the nation by "abusing and beguiling" it, and by his "usurpations," if the King pleased, or to such extent as he pleased; as to which the same animadversions occur as have been above made with regard to the Annates Act. Both these laws resembled the *Senatus-consultum* against Catiline, in being *tanquam in vaginis reconditæ*, to be drawn from their scabbards entirely, partly, or not at all, as the Pope was obstinate, compromising, or complying¹.

¹ It is stated, by a recent historian, that "*If the King so pleased*, they (the Parliament) would not be *beguiled any more*;" and again, "*The Bishop of Rome might retain his revenues, or receive compensation for them, if he dared to be just*." In other words, what had been wrung from the nation, as the preamble states, by usurpation, abusing, beguiling, and false pretences, was to be annulled *only if the King pleased*; and the Pope might retain it all, or an equivalent, if, in the matter of the divorce, he subscribed to the King's notions of justice.

The statute for the settlement of the Royal Succession (25 Hen. VIII. c. 22) contains, as has been seen, in a former chapter, the term *Successors*, which, Sir Matthew Hale thinks, was introduced with a view to the spoliation of the Monasteries which was in contemplation, in order that the attainer of an Abbot might draw with it the confiscation of his Abbey. Lord Bacon has called attention to the practice, in statutes, of "carrying great matters in general words, without other particular expression." He refers to the statute under review as an example of this usage, and denominates this mode of employing "dark general words" by the term *noctanter*.

Session VI. A.D. 1534.

Shortly after the close of the preceding Session of the Reformation Parliament, that is to say, in April, A.D. 1534, news arrived of the Pope's adjudication annulling Cranmer's sentence of divorce. This proceeding, probably, led to the speedy meeting of Parliament, on the third of November in the same year, and the utter renunciation of the Pope's authority in England. The Session, the sixth, lasted only till the eighteenth of the following month: it was the most important Session to be met with in the religious annals of the country, whether as it regarded the usurpations of the Pope, or the assumptions of the Anglican Church. Several subordinate statutes were passed in this Session with a design of corroborating the King's supremacy, or which were deduced from it in the nature of corollaries.

The *animus* of Henry at the commencement of this Session may be collected from a Proclamation which shortly preceded it, bearing date the 9th of June, A.D. 1534, wherein it was ordered that "all manner of prayers, oracions, rubrics, canons, or mass-books, and all other books in churches, wherein the Bishop of Rome is named, or his presumptuous and proud pomp and authority preferred, utterly to be abolished, eradicate, and

rased out, and his name and memory to be never more (except to his contumely and reproach) remembered, but perpetually suppressed and obscured." There is a letter, in Ellis's Collections, dated the 12th of September, in which a Justice of the Peace writes that the parson of Dymchurch "had not expelled the name of the Bishop of Rome out of divers and sundry books in his keeping, part of them belonging to himself, and part to the Church." The Justice informs Cromwell, "And, thereupon, I have committed him to the gaol, there to remain till your Lordship's pleasure be further known in that behalf."

The *first* Act of the Session was the famous Act of Supremacy. Its *title*, indorsed on the original Act, is, "The King's Grace to be authorized Supreme Head;" that on the Statute Roll is "An Act concerning the King's Highness to be Supreme Head of the Church of England, and to have authority to reform and redress all errors, heresies, and abuses in the same."

In the Act it is recited "Albeit the King's Majesty justly and rightly is and ought to be Supreme Head of the Church of England, and *so is recognized by the Clergy of this realm in their Convocations*, yet, nevertheless, for corroboration and confirmation thereof and for increase of virtue in Christ's religion, and to repress and extirp all errors, heresies, and other enormities and abuses heretofore used in the realm."

It was therefore enacted that the King should be "taken, accepted, and reputed the only Supreme Head in Earth of the Church of England called *Ecclesia Anglicana*, and shall have and enjoy annexed and united to the imperial crown of this realm, as well the title and stile thereof, as all honours, dignities, pre-eminent, jurisdictions, privileges, authorities, immunities, profits and commodities to the said dignity of Supreme Head of the same Church belonging and appertaining." The King was authorized to "visit, repress, redress, reform, order, correct, restrain and amend all such heresies, errors, abuses, offences, con-

tempts and enormities, whatsoever they be, which by any manner of spiritual authority and jurisdiction ought, or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity and tranquillity of this realm."

Much had been accomplished by the Reformation Parliament, in its previous Sessions, for divesting the Pope of his power, emoluments, and influence in England; much for reducing the Anglican Church under due subordination to the civil government. The Act of Supremacy was an epitome, and, in some points, an extension, of what had been done for these ends within the preceding five years. The events of those five years had confirmed the nation in an aversion to spiritual ascendancy and exactions; the grievances which had been habitual during the first twenty years of Henry's reign, became nauseous, after an exemption from them had been tasted. In the course of the same period, opposition had been overawed by sanguinary laws; and cupidity awakened by a closer prospect of unparalleled spoliation. Towards the close of this period the national spirit had been enlisted on behalf of the King in consequence of foreign menaces both of the spiritual and temporal swords. It would not be surprising, therefore, even if the Parliament had not been composed, as Hall writes it was, "for the most part, of the King's servants," and in spite of its creed, that, in the twenty-sixth year of Henry's reign, it should have passed the Act of Supremacy.

This memorable Act, introduced a greater simplicity in the government, by uniting the spiritual with the civil power, and preventing disputes about their limits. By constituting the King the head of the religion of the kingdom, it made him less likely to exalt the jurisdiction of the clergy to the prejudice of his own temporal jurisdiction. But the chief recommendations of the Act, in the eyes of the nation, were, probably, that it

superseded, in the most unlimited terms, every species of interference, and every pecuniary claim of the Pope in England ; and that it extinguished the pretensions of the Anglican Church to be independent of the State, and to subjugate the Laity by a sort of *imperium in imperio*. Whatever may be thought of the immediate consequences of this Act, of the intentions of its framers, and of the injuries it inflicted on civil and religious liberty, posterity will look upon it as the basis of the measures by which superstition was subsequently driven from this land, and liberty of conscience ultimately vindicated.

Considering the character of the King, the constitution of the Parliament, and the excitement of the nation, at the time of passing the Act of Supremacy, it was not to be expected that it would be framed with a scrupulous concern for civil liberty. The Headship of the Church is treated of as if it were an ancient and well known magistracy, to which belonged certain "honours, dignities, pre-eminent, jurisdictions, privileges, authorities, immunitiess, *profits*, and commodities," which were too familiar to require definition : whereas, as Sir James Mackintosh observes, the Act herein "contains a falsehood, as far as it intimates the previous existence of the office or any knowledge of its rights." An authority is given to the King to "visit, repress, redress, reform, order, correct, restrain and amend heresies, errors, abuses, offences, contempts, and enormities whatsoever they be," to the same extent as his compliant Judges should hold might lawfully have been done by any spiritual authority in England¹. There is no mention of the co-operation of Parliament in the discharge of any of those large and indefinite functions. The power of the stake was united with that of the sceptre ; and according to a

¹ It was held in the 39th of Elizabeth, by Judges of good character, that the Queen might grant dispensations for pluralities which the Archbishop could not under the 21st of Hen. VIII., "quia tout authority que le Pape usoit, est done al corone." The point in issue was, "Si la Reyne, ayant le supremacy unite al corone quel le Pape usurpoit, poiet grant dispensations sans l'evesque?"—Moore's *Rep.* p. 542.

significant, though quaint, expression of an old writer, Henry was constituted a King with a Pope in his belly.

Among the first-fruits of the transference of the Supreme Headship was a Proclamation for imposing a national creed¹; this document Henry judged it expedient to fortify by the signatures of Cromwell, Cranmer, seventeen bishops, forty abbots and priors, together with fifty archdeacons and proctors of the Lower House. This “mingle-mangle, or hotch-potch,” as Latimer termed it, was intitled “Articles of Faith.” It was for a breach of these Articles, in holding that the Lord’s Supper was only a pious rite appointed to commemorate the death of Christ, that Lambert was burned, having been first subjected to a public disputation in Westminster Hall, at which the King presided. Cromwell says of the royal disputant, “It was a wonder to see with how excellent majesty his Highness executed the office of Supreme Head. How benignly he essayed to convert the miserable man: how strong his Highness alleged against him!”

Upon the acquisition of the Supremacy, and with it, the authority to exercise ecclesiastical jurisdiction, the superintendence of the Crown over clerical matters was delegated to Cromwell, as the King’s Vicegerent. But the ecclesiastical courts were allowed to retain their jurisdictions, so long as they renounced all connection with the Papal See: each judge of those courts making an addition to his style of “*auctoritate serenissimæ regie majestatis in hæc parte legitime fulcitus*”

¹ The document in the British Museum has been published with the *facsimile* autographs, subscribed about three years previous to the total dissolution of the monasteries.

² Archdeacon Hale, in his collection of *Precedents*, notices several instances of suits with regard to discipline, affecting the laity as well as clergy, in the ecclesiastical courts, between the date of the Act of Supremacy and the end of Henry’s reign. One of these throws some light upon the practical execution of criminal law considered in a former page. One John Coyte, a London curate, had absented himself from a procession in which it was his duty to have walked “et quod tempore processionis hujusmodi, præsens fuit in *publico spectaculo*, apud Tyborne dum quidam transgressores legis mortem ibidem subierunt.” Another precedent is that of a layman of the name of Symon Patryke, “quod nunquam ibat ad lectum in charitate, per spatium xx^o annorum.” Other suits are for hunting on a Sunday; selling

It will be noticed that the statute is disingenuously framed, in pretending that it was *declaratory*, and that the powers conferred by it were not so much granted to the Crown, as acknowledged to be a portion of the ancient prerogative. The discrepancy between the allegations in statutes and in such records as are not open to suspicion is shown in the omission of the *saving* of the Clergy, in their acknowledgment of the Headship of the Church, viz. “*Quantum per Christi legem licet Supremum Caput.*” And it must appear dishonest to have represented as a free recognition of the English Clergy what had been yielded by them, with great reluctance, under the terror of the pains of a *Præmunire*, involving the total loss of property, loss of liberty for life, and loss of protection even from the arm of an assassin¹. It has been seen, in a former page, that Lord Coke adduces this Act as an example of what he had found, in times past, that “the Houses of Parliament have not been clearly dealt withal, but by cunning artifice of words utterly deceived.”

The *second* Act of this Session has been considered in the chapter concerning the Royal Succession: its object was to justify retrospectively the imprisonment of Sir Thomas More and Bishop Fisher, for not taking an oath which the Act under review ordained had been *meant* by the Legislature to be taken, although it had, in fact, prescribed a different oath. The oath

books on a Sunday; eating flesh on the vigil of the nativity of our Lady; talking in the church in the time of service; swearing in the churchyard by the life, blood, wounds, and sides of our Lord; a putative father is sentenced to make the young woman a honest *mends*, and to go about the church, on three Sundays, with a candle of 11 d. prye, and declare the cause why he hath done it. Archdeacon Hale says that his book, in which the precedents reach from 1480 to 1640, might be called a history of the Moral Police of the Church.

¹ An apologist of Henry writes, “The first Act of the Session was to give the sanction of the legislature to the title which had been conceded by Convocation, and to declare the king Supreme Head of the Church of England;” he adds, however, that, “as affirmed by the legislature, this designation meant something more than when it was granted three years subsequently by the Clergy.” He finds no fault with Henry for procuring a concession by compulsion, but unwittingly accuses him of representing the terms of that concession to have signified a larger meaning than what they were intended by the conceders to signify.

which the Parliament was represented to have meant, (notwithstanding its words to the contrary,) contained expressions not to be found in the legitimate oath, viz. " You shall swear to bear faith, truth, and obedience *alone*ly to the King's Majesty, and not to any *foreign authority or potentate*; and in case any other oath hath been made by you to any person or persons, that then ye do repute the same as *vain and annihilate*." It was falsely alleged that such was the *tenor* of the oath which More and Fisher had declined. This piece of legislation was, in the highest degree, bungling; it is noticeable, in this place, as showing that justice and common sense were trampled upon, lest it should appear that persons who had declined taking an oath virtually for the King's Supremacy, though at a time when no such oath had been imposed by law, might be liberated from illegal imprisonment. In the 22nd and 23rd Acts of this Session Fisher and More were attainted of misprision of treason for not swearing by anticipation, illegally indeed, but, as the Parliament imagined, to the credit of the newly declared Headship.

The *third* Act of this Session related to the payment of First-Fruits and Tents of benefices to the King; they had been long enjoyed by the Popes, the former by analogy to *primer seisis*, the latter to Levitical *heave-offerings*. In this Act it is recited that " Forasmuch as it is, and of very duty ought to be, the natural inclination of all good people, like most faithful, loving, and obedient subjects, sincerely and willingly to desire to promote not only for the public weal of their native country, but also for the supportation, maintenance, and defence of the royal estate of their most dread, benign and gracious sovereign lord, upon whom, and in whom dependeth all their joy and wealth; in whom also is united and knit so princely a heart and courage, mixed with mercy, wisdom and justice, and also a natural affection joined to the same, as by the great, inestimable, and benevolent arguments thereof, being most bountifully, largely, and many times showed, ministered, and approved towards his loving and obedient subjects, hath

well appeared, which requireth a like correspondence of gratitude to be considered, according to their most bounden duties; wherefore his said humble and obedient subjects, as well the lords spiritual and temporal, as the Commons, calling to their remembrance not only the manifold and innumerable benefits daily administered by his Highness to them all, and to the residue of all other his subjects of this realm; but, also, how long time his Majesty hath most victoriously by his high wisdom and policy, protected, defended, and governed this his realm, and maintained his people and subjects in the same in tranquillity, peace, unity, quietness and wealth; and also considering what great, excessive, and inestimable charges his Highness hath heretofore been at, and sustained by the space of five and twenty whole years, and, also, daily sustaineth, for the maintenance, tuition and defence of this his realm, and his loving subjects of the same, which cannot be sustained and borne without some honourable provision and remedy may be made, found, provided and ordained for maintenance thereof; do, therefore, desire, and most humbly pray, that for the more surety of continuance and augmentation of his Highness' royal estate, being not only now recognized (as he always indeed hath heretofore been) the only Supreme Head on earth, next, and immediately under God, of the Church of England, but also their most assured and undoubted natural sovereign liege lord and King, having the whole governance, tuition, maintenance, and defence of this his realm, and most loving and obedient subjects of the same."

It was, therefore, enacted that all persons appointed to any Archbishopric, Bishopric, or any other dignity, benefice, office or spiritual promotion should pay to the King, his heirs and successors "to endure for ever," *first-fruits*, or their profits for the first year; and *tenths*, or a tenth part annually of the profits of their preferments, to be united and knit to the King's *imperial* crown for ever; *first-fruits* that had been paid by prescription to the Bishop of Norwich, Archdeacon of Richmond, and others,

were, in future, to be paid to the King, without, as it would appear, any compensation. There is an exception, as to First-Fruits, of benefices not above the yearly value of eight marks, that is to say, the incumbents were to enter into a bond with sureties, for the payment of the First-Fruits, conditioned to be void upon death within three years. There was no exception in the case of Tents. Provisions were made for issuing Commissions for inquiring into the value of spiritual preferments.

With this loving gift of First-Fruits to the King, may be compared what was said of them, in the third Session of this Parliament, when received by the Pope. They were then stigmatized as, many times, utterly undoing and impoverishing the friends of the payers, advancing such payments; as having risen, grown, and increased by an uncharitable custom, against all equity and justice; as having been originally demanded for the defence of Christian people against Infidels, but now exacted only for lucre against all right and conscience; that they were intolerable and importable. In a statute of Henry IV., the payment of First-Fruits is termed a "horrible mischief and damnable custom." The burden became portable, the undoing of friends was treated as fictitious or frivolous, right, justice, equity, conscience were satisfied, as soon as the spoiler was changed.

Blackstone, in his eulogistic vein writes, "As the Clergy *expressed their willingness* to contribute so much of their income to the head of the Church, it was thought proper to annex this revenue to the Crown." He has not mentioned how or when the Clergy's willingness was expressed; it may be allowed, therefore, to doubt the fact, let alone the improbability of such an expression being unconstrained. The popularity of the Annates Act would have been diminished, and that measure might not have been so easily carried, if it had been understood that it was purely a question between Pope and King.

The verbosity of the Preamble of the Act under review is

suspicious ; it may be considered as amplifying two points, one that the King deserved an overflow of gratitude from the nation, the other that he was in want of money. No reason is stated why the beneficed clergy should discharge the whole load of gratitude, or pay exclusively for the defence of the realm. Neither is the ground apparent, why, in a fit of gratitude to Henry VIII., and because expensive wars consequent on the divorce were impending, the King's *Successors* "for ever" should have been enriched with First-Fruits and Tents ; that a rector or vicar of the present day looking for the origin of demands he can ill afford to pay, should find nothing, in the Act of Henry, but an assignment of causes, the truth of which he may well doubt, but which, at all events, have ceased to operate for centuries.

The Clergy, who had been mulcted in the *Præmunire*, and shorn of privileges and profits by the Reformation Parliament, were not likely to have entertained any special gratitude towards Henry. In fact, the statute follows the model and expressions of that iniquitous measure, whereby this Parliament had professed to give a vent to national gratitude, by annulling the King's debts. In like manner, the Parliament, in this Act, professed to acquit themselves of a load of obligations, by saddling another class of persons with an onerous payment.

The fulsome language of the Preamble appears to have been the model for a later statute of Henry's reign, only adorned with appropriate imagery, viz. " We, the people of this realm have, for the most part of us, so lived under his Majesty's sure protection, and yet so live, out of all fear and danger, as if there were no war at all ; even as the small fishes of the sea, in the most tempestuous and stormy weather, do lie quietly under some rock, or bank side, and are not moved with the surges of the water, nor stirred out of their quiet place, howsoever the wind bloweth."

The Court of Commissioners of First-Fruits and Tents is the subject of a chapter in Lord Coke's *Fourth Institute*. By an

instrument, in Rymer, of the date of the 32nd of the reign, the King recites that he has erected a *Court, communiter vocatam Curiam primorum Fructuum et Decimarum*, and he appoints an Auditor to his Court, with a salary of 20*l.* ac tot et talia, dietas, regarda, expensas, et emolumenta per allocationem Cancellarei et Concilii *Curiae* prædictæ, as the auditors of the Duchy of Lancaster received. The Clergy were exonerated by Philip and Mary from the payment of First Fruits and Tents; they were re-taxed by Elizabeth, who, however, did not revive Henry's Court, but transferred its business to the Court of Exchequer, where the Certificates of Bishops and other records relating to the subject, from the Reformation to the year 1720 (soon after the institution of Anne's so-called *bounty*), are now preserved.

Fermors of spiritual persons were, by the 17th Act of this Session, exempted from paying any First-Fruits or Tents on behalf of their lessors, "any covenant, bargain, contract, bond, condition, clause of re-entry or other thing heretofore made or concluded to the contrary thereof, in any wise notwithstanding." The preamble of that Act merely states that it was enacted for "certain reasonable and urgent considerations." The Act seems an unjust interference between landlord and tenant in existing leases, in future leases it was simply inconvenient.

The *Valor Ecclesiasticus*, sometimes called the *King's Books*, is a kind of Domesday of Church property. It was made from returns to commissions directed to be issued by this Act. This record presents a complete view of the description and value of all ecclesiastical property in the reign of Henry VIII.; it is often useful in ascertaining what are rectorial and what vicarial tithes in cases where endowments have been lost; previous to the commutation of tithes, it was universally used in questions concerning the *rankness* of a modus; it is frequently of biographical and genealogical importance. When there has been felt any convenience in adhering to the original statements of values in ancient laws, instead of construing those laws according to their

spirit, and to changes in the value of money, the *Valor Ecclesiasticus* has been used to countenance benign interpretations; thus, First-Fruits and Tents are, to the present day, calculated by it; and, in questions upon contemporary statutes of Colleges, it has been referred to, as shewing that what, exoterically, might appear a large benefice, was, esoterically, and, in the *King's Books*, a very small one¹.

The Treason Act of this Session (26 Hen. VIII. c. 13) has been considered in the chapter concerning the Criminal Law. It is here noticeable for being a supplement to the Act of Supremacy; supplying the punishments which were craftily omitted in that Act, for the reasons alleged by Lord Coke. It has been seen, how, by subtle interpretation of words, as Lord Coke expresses it, *closely couched*, this Treason Act was made instrumental to the destruction of Sir Thomas More, Bishop Fisher, and a multitude of other persons, who were charged with a denial of a King's *title*, viz. his title of Supreme Head of the Church. Cardinal Pole would, probably, have been entangled in the fatal meshes of this Act, had he listened to Henry's insidious invitation of coming to England for the purpose of explaining certain obscure passages in his book, *De Unitate*; but he remembered, as he said, the fable of the fox and the sick lion.

Sanctuary was excluded, in every kind of treason, by this Act; and, by a furtive form of expression, as hath been noticed in a previous page, the attainders of Bishops and Abbots

¹ The statutes of Colleges founded before the Reformation are interpreted according to the taxation of Pope Nicholas, A.D. 1292, temp. Edw. I. Bishop Fleetwood's *Chronicon Pictorum* was written for the purpose of shewing that, owing to the changes in the prices of commodities, a fellow of a college founded in the reign of Henry VI. might retain his fellowship, notwithstanding his income much exceeded the limit imposed by the statutes of his college for the purpose of excluding rich men from participating in its revenues, provided it did not exceed what, at this day, was an equivalent to that limit. On the other hand, in colleges where a benefice may be held along with a fellowship, provided it be under a specified value, Pope Nicholas and Henry VIII. are appealed to as the legitimate valuers. In both instances, it will be observed, a similar result, though by reasonings diametrically opposite, is arrived at, viz. that of holding fast the fellowship.

were made to involve the confiscations of their bishoprics and abbeies.

Suffragan Bishops were the subject of an Act passed in this Session (26 Hen. VIII. c. 14). It was recited, therein, that no provision had been made for Suffragans, and it was enacted that Archbishops and Bishops disposed to have Suffragans might present two persons to the King, who should give to one of them the style, title, and name of a Bishop, to be, thereupon, consecrated by an Archbishop. A Suffragan's duties and profits were to be prescribed; he was allowed to have two benefices with cure, being judged worthy of a triple plurality.

The appointment of Suffragans was convenient, on several accounts, in the reign of Henry VIII. Besides increasing the patronage and influence of the Crown, Suffragans would have been of use upon the absence abroad of Bishops, who were frequently sent, in this reign, upon embassies. Gardiner, Bishop of Winchester, and Fox, Bishop of Hereford, were favourite diplomatists of Henry; these names, with those of other Bishops, occur, in several treaties, executed in France, Germany and Scotland. Further, Henry often employed his Bishops upon political matters at home. Thus Cranmer performed many base services for the King, in the business of his Queens, at the Council, and at the Convocation, on the judgment-seat, and in the Tower. Again, the investigation and punishment of heresy might entitle several of Henry's Prelates to the encomium passed by Latimer on the Devil, viz. that of being a *busy Bishop*. Latimer himself was called upon to preach at Smithfield; and Cranmer, in a letter to a friend, in Ellis's *Collections*, from which the following is an extract, shews the consumption of time which the burning of heretics might occasion a pains-taking Archbishop:

"Other news we have none notable, but that one Frith, which was in the Tower in prison, was appointed by the King's Grace to be examined by me, my Lord of London, my Lord of

Winchester, my Lord of Suffolk, my Lord Chancellor, and my Lord of Wiltshire ; whose opinion was so notably erroneous, that we could not dispatch him, but were fain to leave him to the determination of his Ordinary, which is the Bishop of London. His said opinion is of such nature that he thought it not necessary to be believed as an article of our faith, that there is the very corporeal presence of Christ within the host and sacrament of the Altar." (Frith, in fact, used the very words which have been copied into the Communion Service, to the effect that Christ's body could not be in two places at once.) "And, surely, I myself sent for him three or four times to persuade him to leave that imagination. But, for all that we could do in the matter, he would not apply to any counsel. Notwithstanding, now he is at a final end with all examinations ; for my Lord of London hath given sentence, and delivered him to the secular power, when he looketh every day to go unto the fire ; and, thus, fare you well."

Session VII. A.D. 1535—6.

The Seventh Session and last Session of the Reformation Parliament, commenced on the fourth of February, A.D. 1535—6, and concluded on the fourteenth of April, A.D. 1536. This Parliament, it will be recollectcd, first met on the third of November, A.D. 1529 ; its long duration shewed a singular adaptation of its policy and sentiments to the wayward impulses of Henry's disposition, if it did not indicate that the Lords and Commons were merely the subservient instruments of the royal will. The King had now sped, and little remained but to gather and divide the prey.

In the first ecclesiastical Act of this Session, the power of constituting thirty-two Commissioners, conferred in the fourth Session of this Parliament, was renewed (27 Hen. VIII. c. 15) ; apparently from a doubt whether such delegated authority would not expire with the expiring Parliament. It was enacted that the Commissioners might make their Report within three years after

the Dissolution of the Parliament. By another Act, passed in the 35th year of the reign, in a bolder flight of legislation, the Report might be received at any time during his Highness's life, as it is said, "whom our Lord long preserve!" The Acts of Uniformity, the promulgation of the Thirty-nine Articles, and the legal restriction of heresy to opinions condemned in the four General Councils, contributed, in subsequent reigns to lessen the utility of a revision of Canons that had been authorized by three Acts of Henry VIII.; (the policy of that King seems to have led him rather to retain a power of abolishing every Canon of the Church he pleased than to fetter himself by their actual reformation.) Hume was of opinion, apparently with reason, that "the present perplexity of the Ecclesiastical law was thought by Henry to increase his authority, and keep the clergy in greater dependence."

An Act of this Session imposed further restrictions on the privilege of Sanctuary (27 Hen. VIII. c. 19). It has been treated of in a previous chapter, as obliging sanctuary-men to wear badges, and subjecting them to a variety of strict regulations which, in earlier sessions of this Parliament, might have been an imprudent interference with a reputed semi-divine institution. More was done for the reform of Sanctuaries later in the reign; but their abolition did not accord with the policy or was beyond the power of Henry's Supreme Headship.

An Act was passed in this Session, to enforce the collection of Tithes (27 Hen. VIII. c. 20). It was therein recited, that, "Forasmuch as divers numbers of evil-disposed persons inhabiting sundry counties, cities, towns, and places of this realm, having no respect to their *duties to Almighty God*, but against right and good conscience, have attempted to subtract and withhold, in some places, the whole, and, in some places, great parts of their tithes and oblations, as well personal as praedial, *due unto God and holy Church*; and, pursuing such their detestable enormities and injuries, have attempted, in late time past, to disobey, contemn, and despise the process, laws, and decrees of the

ecclesiastical courts of this realm, in more temerous and large manner than, before this time, hath been seen."

It was, therefore, enacted, that tithes might be recovered by the process of the Ecclesiastical Courts; that offenders subtracting tithes might be imprisoned, without bail, by any member of the King's Council, or by two Justices of the Peace, till they should find sufficient surety to be bound for their performance of the Ordinary's sentence.

It is suggested, by Dr Burn, that this Act was passed in consequence of many occupants of land, taking occasion, upon trifling pretences, to withdraw their tithes, in consequence of the rumour of a dissolution of Monasteries in the Parliament; he might have added, in consequence, also, of the hard blows, and vilifying language which the ecclesiastical courts had recently endured from the Parliament. It is probable, that a motive for the Act was not wanting in the circumstance that the King, and numerous members of both Houses of Parliament, were on the eve of becoming tithe-owners.

This Act is adduced by Archdeacon Hale, in corroboration of his other arguments, as tending to prove that the Reformation rather established than diminished the legal authority of the Ecclesiastical Jurisdiction in England, and did as little injury to the Ecclesiastical Law. The jurisdiction of the Spiritual Courts over tithes has yielded to Time, whose agency has therein been more powerful than the laws of Henry VIII.

A *divine right* to tithes may seem to be intimated in the Preamble of the Act, which speaks of them as the dues of God. With regard to this pretension, the Bishops, in their reply to the supplication of the Commons before adverted to, say, that "Tithes being due by God's law, be so duly paid by all good men, as there needeth not exaction in the most parts of your Grace's realm. This we know, in learning, that, neither a hundred years, nor *seven* hundred of non-payment, may debar the right of *God's law*." This argument from a judaical institution

was pretended to be fortified by numerous texts; the divine right of tithes was long maintained, as an article of faith, as we may learn from Selden's submission to the High Commission Court, in the reign of James I., for having been guilty of publishing his *History of Tithes*, viz.

“ My good Lords, I most humbly acknowledge the error I have committed, in publishing the *History of Tithes*; and, especially, in that I have at all, by shewing any interpretation of Holy Scriptures, by meddling with councils, fathers, or canons, or by what else soever occur in it, offered any occasion of argument against any right of maintenance, *jure divino*, of the ministers of the gospel; beseeching your Lordships to receive this ingenuous and humble acknowledgment, together with the unfeigned protestation of my grief, for that, through it, I have so incurred his Majesty's and your Lordships' displeasure conceived against me, on behalf of the Church of England.

JOHN SELDEN.”

An Act was passed in this Session, for establishing the Court of Augmentations (27 Hen. VIII. c. 27). It immediately preceded the Act for the Dissolution of the Lesser Monasteries, but, nevertheless, recites it, and establishes a Court, as is declared, “ for its more surety and establishment, and to the intent that the King's Majesty, his heirs, and successors, shall be yearly as well truly and justly answered, contented, and paid, of the rents, farms, issues, revenues, and profits arising, coming, and growing of the said manors, lands, tenements, and other hereditaments before specified, as of the goods, chattels, plate, stuff of household, debts, money, stock, store, and other whatsoever profit and commodity, given, granted, or appointed to the King's Majesty by the same.” The Court of Augmentations was to consist of a Chancellor, Treasurer, King's Attorney and Solicitor, ten Auditors, seventeen Receivers, one Clerk, one Usher, one Messenger, all new creatures of royal patronage.

The Court of Augmentations, thus established, continued in

existence until the first year of the reign of Mary, A. D. 1553, when it was dissolved, and its jurisdiction transferred to the Court of Exchequer. Since this time the *placita* and other records of the Court of Augmentations have been preserved in an office, called the Augmentation Office. Among these documents are numerous proceedings in suits, and leases by the Crown, from the establishment of the Court to its abolition; together with many of the original deeds, charters, and evidences of title that had belonged to the dissolved Abbeys. The Augmentation Office is the appropriate repository for Monastic Records; if produced from any other place, their custody must be reasonably and probably accounted for. Thus, they have been held inadmissible in evidence in cases in which they have been produced from the Herald's Office, from the Bodleian Library at Oxford, and from the Cotton MSS. in the British Museum.

The principal Act of this Session, was that famous one for dissolving, and giving to the King and his heirs, all religious houses under the yearly value of two hundred pounds. It is recited, in the Preamble thereof, that "Forasmuch as manifest sin, vicious, carnal, and abominable living is daily used and committed commonly in such *little* and *small* Abbeys, Priories, and other religious houses of monks, canons, and nuns, where the congregation of such religious persons is *under* the number of *twelve* persons, whereby the governors of such religious houses and their convents, spoil, destroy, consume, and utterly waste, as well their churches, monasteries, priories, principal houses, farms, granges, lands, tenements and hereditaments, as the ornaments of their churches and their goods and chattels, to the *high displeasure of Almighty God*, slander of good religion, and to the great infamy of the King's Highness and the realm, if redress should not be had thereof. And albeit that many continual visitations have been heretofore had, by the space of two hundred years and more, for an honest and charitable reformation of such unthrifty, carnal and abominable living, yet,

nevertheless, little or none amendment is hitherto had, but their vicious living shamelessly increaseth and augmenteth, and, by a cursed custom, so rooted and infected, that a great multitude of the religious persons in such *small* houses do rather choose to rove abroad in apostacy than to conform themselves to the observation of good religion, so that without such small houses be utterly suppressed, and the religious persons therein *committed to great and honourable monasteries* of religion in this realm, where they may be compelled to live religiously, for reformation of their lives, the same else be no redress nor reformation in that behalf. In consideration whereof, the King's most royal Majesty being *Supreme Head* on earth, under God, of the *Church of England*, daily studying and devising the increase, advancement, and exaltation of true doctrine and virtue in the Church, to the only glory and honour of God, and the total destruction and extirpation of vice and sin, having knowledge that the premises be true, as well by the accounts of his late *visitations* as by *sundry credible informations*, considering also that divers great and solemn monasteries of this realm, wherein (*thanks be to God*) religion is right well kept and observed, be destitute of such full number of religious persons, as they ought and may keep, hath thought good that a plain declaration should be made of the premises in this present Parliament. Whereupon, the said Lords and Commons, by a great deliberation, finally be resolved, that it is, and shall be much more to the pleasure of Almighty God, and for the honour of this *his realm*, that the possessions of such small religious houses now being spent, spoiled, and wasted, for increase and maintenance of sin, should be used and committed to better uses, and the unthrifty religious persons, so spending the same, to be *compelled to reform their lives.*"

It was, therefore, enacted, that all monasteries which had not land or other hereditaments above the clear yearly value of two hundred pounds, with their lands and other hereditaments,

and their ornaments, jewels, goods, chattels, and debts; should be given to the King, his heirs, and assigns, for ever, to do and use therewith his and their own wills, to the *pleasure of Almighty God*, and to the honour and profit of this realm; that fraudulent assurances made by governors of houses before their dissolutions should be void; that the King, by his letters patent, might, at his pleasure, preserve any religious houses that would, otherwise, be suppressed by the Act¹; that all persons to whom the king should grant or let the site of any house suppressed should be bound to keep "an honest continual house and household in the same site or precinct, and to occupy yearly as much of the same demesnes in ploughing and tillage of husbandry," as had been commonly so used within twenty years next before the Act. Hospitality and Agriculture were thus provided with a local habitation to the end of time.

Respecting *pensions*, it was provided, that "His Majesty is pleased and contented, of his most excellent charity, to provide to every *chief head and governor* of every such religious house, during their lives, such yearly pensions and benefices, as for their degrees and qualities shall be *reasonable* and *convenient*, wherein his Highness will have most tender respect to such of the said chief governors, as well and truly preserve and keep the goods and ornaments of their houses to the *use of his Grace*, without spoil, waste, or embezzling the same. And also His Majesty will ordain, and provide, that the convents of every such religious house shall have their *capacities*, if they will, to live honestly and virtuously abroad; and some *convenient* charity disposed to them towards their living, or else shall be committed to such honourable great monasteries of this realm, wherein good religion is observed as shall be limited by his Highness, there to live religiously during their lives."

¹ An instance of such a preservation occurs in Rymer. The Abbey of Winchester is preserved by letters patent. The consideration is stated to be, "ob favorem quem gerimus et habemus." The Abbess was to pay to the King "omnes decimas et primos fructus quotienscunque evenire contigerint."

Clauses in the Act relative to the obligations of Monasteries to contribute towards the liquidation of the fine imposed on the Clergy in the matter of the *Præmunire*, contain averments that the fine was still, in part, unpaid, in the provinces both of Canterbury and York; a fact deserving of consideration in regard to the abject conduct of the clergy, who, it thus appears, were, during the whole of the struggle with the Pope, placed in the dependent and suppliant position of the King's debtors.

It is proposed to consider this Act with reference to its purport, its principles, and its consequences. *First*, as to its *purport*. The generality of several expressions in it will not escape observation; they verify the legal adage, *dolus versatur in generalibus*. Lord Coke, it has been seen, in the chapter on Revenue, particularly notices the provision that the possessions of the Monasteries were given to the King, to use therewith his own will to the *pleasure of Almighty God*, and the *honour and profit of the realm*. Coke remarks that these pretexts were *ad faciendum populum*; he shews how they were falsified by the result; and he holds them forth as a warning to Parliaments, that they insist upon a specification of such promised benefits, as upon the expectation of which they assent to any Act, lest their assent be grasped at, but the promises never performed.

How vague is the expression of "keeping an honest and continual house and household" on the sites of the dissolved monasteries, and how liable to be disregarded, when the monastic origin of particular lands was forgotten. We are informed, in a contemporary letter, published in Ellis's *Collections*, that, in the reign of Elizabeth, it had commonly become hard to know where the Monasteries had stood, or what lands had belonged to them, there being few persons of *any living*, who did not possess some part of the spoil.

If any clause in the Act required to be penned with peculiar precision, it was that regarding pensions to the ejected Monks and Nuns. Every argument by which the confiscation of the

monasteries has been justified, or intended to be justified, assumes that as little injury as practicable ought to have been done to all such life-holders as were not satisfactorily proved to be utterly unworthy of any compensation. Yet the Parliament reposes the whole determination of pensions to the Heads of Religious Houses in the King, according to his opinion, of what was *reasonable* and *convenient*. As to the subordinate Monks and Nuns, it might, indeed, be supposed from the specious language of the Preamble, that a removal to a larger Religious House was the worst calamity that could befall them; but the enacting clauses, it is conceived, shed a more dubious light on their future destiny; they were not, in fact, indulged with a cloistered life. Amidst the obscurities which, by the Act, were permitted to hang over the subsequent treatment of the inmates of the dissolved Houses, a solitary ray of hope was imparted to Governors and Governesses, to the effect that if they preserved "the goods and ornaments of their houses *to the use of his Grace*," it would entitle them to the "King's most tender respect¹."

The Act, if judged by its own professions, must, morally, stand or fall in the opinions of posterity, upon a single allegation, viz. the sinfulness of the religious inmates of the Lesser Abbeys, involving the waste of their conventional possessions, in order to maintain that sinfulness. The displeasure of Almighty God is stated, in the preamble, to have been incurred, but it was hoped that the dissolution of the lesser Monasteries would restore peace with heaven.

Stress is laid, in the Preamble, upon the circumstance that the abbeys about to be dissolved were *little and small*, and that the congregations of the religious persons were "under the number of twelve." It is suggested that this littleness of size and smallness

¹ The pensions granted by the King were chiefly to those who had surrendered their abbeys. An instance occurs, in Ellis's *Collections, of Pensions granted to the Prior of Westacre and Twelve of his Monks*; in the *Compendium Comptorum* this Prior and his Monks are accused of most flagrant acts of incontinency. Layton, the Visitor, in a letter to Cromwell, calls them *false knaves*.

of number led to vices which would be obviated, if the religious inmates of little and small Monasteries were removed to such as were great and honourable. The question of smallness or largeness, is left to be decided by certificates in the King's Exchequer; as to which it may be observed, that it has been the general opinion, that owing to fines, and other causes, the nominal rentals of monastery farms were very much below their real values. It will be allowed that, in valuations of land, there is generally a large margin left for variance between the opinions of experienced and honest surveyors; how important, therefore, is it to know when, and by whom, and in what manner the King's certificates were concocted. There can be no doubt that persons employed, on the eve of the Act, to say what was a monastery of a value not above two hundred pounds a year, would have known that the reduction of its value was more consonant than its enhancement to the interests of their employers.

The number *twelve*, of religious persons, occurring in the preamble, seems to have been introduced as an allegation *ad captandum*, for neither that, nor any other number of monks or nuns is adverted to for the purpose of exemption, or otherwise, in the enacting clauses of the Act. It was, perhaps, judged, that the Visitors could not diminish *numbers* with the same plausibility as *values*.

Singular virtue was represented to be inherent in this Procrustean limit of £200 a year. Below it, the monasteries were such a sink of iniquity, that there was no use in drawing distinctions, for *Quid te exempta juvat spinis de pluribus una?* Whereas the fraternities of Great Monasteries were pronounced by a King and his Parliament, not only to be spectacles of piety in themselves, for which, in the preamble, “*thanks to God*” are tendered, but fit characters to convert sinners, brethren and sisters, to their own ways. It is, moreover, assumed, that where monasteries were found by Visitors, to be of a value not above two hundred pounds a year, nothing could be done

for their improvement in the way of reforming their inmates, or by colonizing them with any of the righteous monks with which, it was admitted, the larger monasteries abounded, but that the only amendment of which they were capable, was that of giving their sites, lands, goods and chattels to the King.

The whole Act is based on the assumed veracity of reports stated to have established a somewhat vague result, viz. the "sin, and vicious, carnal, abominable living" of the monks and nuns. As to which it will be allowed that, in monasteries great and little, the vows of chastity, and cloistered habits, would be very apt to lead, in many instances, though not universally, to sinful living, and that this would have been more generally the case, seeing that most English monasteries had been exempted from episcopal control. It is antecedently probable, likewise, (though it is not made a point of in the Act) that gross impositions would frequently have been practised by the monks on the credulity of the ignorant or superstitious¹. It is a remarkable circumstance that the King and the Parliament should have exculpated the Greater Monasteries from such very probable and obvious imputations. It may raise some doubts concerning the truth of what the Visitors did say, if they did not, at this time, say more; if they did say more, the King must have thanked God for what he must have believed was the handicraft of Satan.

It has been suggested, by a recent historian, that "it is enough that the Report of the Visitors was drawn up by men who had the means of knowing the truth, and were apparently under no temptation to misrepresent what they had seen; that the description coincides with the authentic letters of the Visitors; and that their account was generally accepted as true by the English Parliament." These propositions admit of a more

¹ In Ellis's *Collections* is quoted the following extract from a book of payments by the Treasurer of the Household, 1 to 4 Hen. VIII., in the British Museum: "July 29. For the King's offering at the Rood of Grace, 6s. 8d."

lengthened inquiry than is compatible with the scope of the present work, but the following particulars may excite some misgiving concerning the Reports of these “honourable men.”

It would seem that the King himself had not placed implicit reliance on the integrity of his own Commissioners. In a Report signed by *four* Commissioners, to be found in Ellis's *Collections*, a very high character is given of the Nunnery of Catesby, with a recommendation that it was a fit subject for the King's charity and pity. On sight of this Report, Henry was displeased, saying, that “it was like we had *received rewards*, which caused us to write as we did.” This circumstance, besides shewing that the King thought his Commissioners capable of taking bribes, indicates that they were taught what kind of Reports were displeasing to him, which, perhaps, may be deemed to have been *some* temptation to misrepresent.

The Commissioners Layton and Bedyl had been clerks of the King's Council; they are unfavourably known from having been Examiners of Bishop Fisher in the Tower. A letter of Layton to Cromwell may here be noticed as shewing his extreme servility towards his employer. He writes to his patron, inviting him to his rectory at Harrow, and, after promising him twenty beds in the town and a dozen within the parsonage, and recommending him to come soon, for fear there might remain few partridges for hawks to fly at, he concludes: “Simeon was never so glad to see Christ his master, as I shall be to see your Lordship in this your own house, and all that ever shall be in it for my life. And fare your Lordship as well as your heart desireth. From Harrow, this Saturday, by your Lordship's most assured to command.”

The original letters relative to the dissolution of the Monasteries published by Sir Henry Ellis, shew that Cromwell, the Choregus of the Visitations, had been personally interested in the confiscations of the Monasteries. Some grants of them were reserved for himself, his son, relatives, and friends; he received

applications for Abbeys from a variety of quarters. Many presents were made to him from Abbots and Prioresses¹. His Visitors frequently urged applications for Abbey lands on their own accounts, or those of others, from whom, probably, they obtained an equivalent. Sir Henry Ellis, whose opinion, from his great familiarity with such documents, is deserving of weight, writes "The reader will now see a succession of letters detailing the particulars of the Visitations of the Monasteries preparatory to their destruction. He may, probably, have some difficulty in believing the Visitors' statements of the depravity found amongst the religious; but he will have none as to the cruelties exercised in their visitations." Sir Henry Ellis gives the transcript of a manuscript in the British Museum, written about 1591, by one whose father and uncle had witnessed the suppression of the Monasteries, in which the sufferings of the religious from the treatment of the Visitors are described as "fit to melt a heart of flint." After many interesting details, the manuscript thus concludes. "If thou wilt know more of these matters, read diligently the statutes made concerning religion in the reigns of Henry VIII. and Edward VI., and thou shalt well perceive the fair speeches there set down to be spoken to bring foul acts to pass. *Fistula dulce canit volucrem dum decipit auceps.*"

¹ *Inter alia*, the Prior of Durham had granted Cromwell an annuity of 6*l.* a year for the "continuance of his favourable kindness," the Prior substitutes for it an annuity of 10*l.* Lord Stafford offers 40*l.* for his favour in procuring the grant of a monastery. Abbot Whiting, at Cromwell's request, appoints his nominee to be Master of the Game; grants him a corrodie, and an advowson. The Abbot of Michaduy pays him 40*l.*, demanded for his *fee*. The Abbot of Leicester sends him the *bulky bribes* of a "brace of fat oxen, and a score of fat wethers." In Ellis's *Collections* (2nd ser. Vol. II.) is a list of monastic grants obtained by Cromwell for himself. It includes the Priory of Lewes, and its cell of Melton Mowbray, the Priories of Michelham in Sussex, Modenden in Kent, St Osithes in Essex, Launde in Leicestershire, Alcester in Warwickshire. In Cromwell's private memoranda, extant in the British Museum, occur the following "Remembrances" relative to the grants of monasteries: "Item, to remember Warner for a monastery. Item, Doctor Kern, the Lord Grey Wylton, Raff Sadelere, Mr Kyngysmill for Whawell, John Freeman for Spalding, *My Self for Launde.*"

It may not appear to impart much credit to the Reports of the Visitors, that their letters (for the most part addressed to Cromwell by whom they were employed) agree with what they reported; in both cases they had the same strong temptations to propagate the same tale. With regard to the seal of confirmation by the Parliament, that assembly professed that their knowledge of the matter was confined to what the King had *told* them was the *result* of the “accounts of his late visitations, and sundry credible informations,” the same King having a very great personal interest that the *result* should have a particular aspect; the argument *ex Parlamento*, also, assumes, what perhaps will not be admitted, that this assembly had established so high a character for independence as to be above the suspicion of backing any story, fable, or legend which the King might please to dictate.

Secondly, with respect to the *Principles* of the Act,—the only principle revealed in it is that of the depravity of the monks, a charge which appealed to the passions of the community, and was calculated, by creating a general feeling of horror, to divert the minds of people from a calm examination of proofs or reasons. An allegation of monkish depravity is made in the Act, upon the King’s *ipse dixit*; it is made in terms too vague to satisfy, reasonably, an assembly that had not seen or investigated its proofs. The Reports of the Visitors, to which access may be now obtained, exhibit, indeed, a very dark picture of monkish immorality; but it may be questioned how far the darkest shades of that picture apply chiefly to the Greater Monasteries, against whom the charge of immorality was not brought forward in Parliament, either on this occasion or ever afterwards. Neither has it been distinctly stated in what fraction of 376 Lesser Abbeys dissolved the Visitors represented that they had discovered enormous sins. But assuming a case of flagrant and general depravity to have been established to the satisfaction of Parliament against

the Lesser Monasteries, it may not be concluded that the only practicable remedy was one of giving their sites and their property to the King; unless it was palpable, that good morals could not thrive in a small Monastery, though, according to the Parliament's *thanksgiving*, they flourished like a green bay-tree in those of larger dimensions.

If the Monks and Nuns were to lose their all, upon an accusation of depravity, they ought not to have been condemned *unheard*, and upon informations taken, for aught that appears, in their absence. A considerable number of Monks and Nuns were, probably, very sinful; but, on behalf of the Monasteries in general, many good services to the community might have been alleged. The King might have called to his "blessed remembrance," their hospitals, their schools, their charities, the consumption of their revenues on the spot where they arose, the preservation of domestic and family history¹, and, what Henry at least, in his will, deemed important for his own soul, their masses. The hospitality practised by Monasteries, especially before the prevalence of inns, must have often been welcome; the following extract from a letter to Henry VIII., written by the son of that Duke of Buckingham who was the victim of Wolsey, exemplifies the services they rendered to honourable families in reduced circumstances; it indicates, also, that iniquity was not paramount in Monasteries to the extent alleged by the Visitors. "And, because he hath no dwelling place meet for him to inhabit, 'fayne to lyve full poorly at boorde in an Abbey this foure yeres daye, wyth his wyff and seven children'." "

¹ Mr Grimaldi (*Origines Genealogicae*) is of opinion that the dispersion of the Monks gave rise to the mandate issued by Cromwell, in 1538, for keeping parish-registers. *Vide ib.* an account of the six books usually kept in Monasteries, and their contents. In Hubback on Successions are some curious specimens of monastic records, together with examples of their modern uses.

² Apart from the policy of the Act, the conduct of Parliament will, perhaps, be regarded as unilateral in a *judicial* point of view: a recent historian, however, observes upon it, "that the *judicial* sentence was pronounced at last in a spirit as rational as ever animated the English Legislature."

Among the probable motives for the Act which are not candidly alluded to in it, Lord Herbert suggests, that the spoils of the Monasteries were wanted to defend the nation against the menaced war and invasion occasioned by the King's divorce, and that "the Parliament was willing to lay the burden of furnishing the King's necessities from themselves;" vicarious liberality, in which the Act for releasing the King from his creditors, and that for giving him the First-Fruits and Tents of the Clergy, shewed them very bountiful.

Lord Coke enumerates *four* false inducements by which the Parliament were deceived into passing the Acts for the dissolution of the Monasteries; one of which was, that the subject should never after be charged with subsidies, fifteenths, loans, or aids; observing, in regard thereto, that, subsequently to the dissolution of the Monasteries, Henry exacted divers loans against law.

It is impossible to lay out of consideration the influence of expected accessions of wealth upon the King, Cromwell and his Visitors, the Ministers of the Crown, and the leading Members of both Houses of Parliament; expectations, which, in the cases of all of them, were abundantly realized. It may be difficult to suppose, that, under such mighty temptations, the question of the dissolution of Monasteries should have been viewed with the same unbiased judgment as if no advantage had been to accrue to the condemners from the condemnation they pronounced, as if they had not been *judices in propriis causis*.

Another latent motive for the Act might have been, that of defending the King's Supremacy from the machinations of the Monks; especially as the Supremacy Act, besides its merits in our eyes, conferred indefinite powers on the King, fortified his divorce, and satiated his wrath. Between a fourth and a fifth part of the lands of the whole kingdom appears to have belonged to the Monasteries, and it is highly probable that every Monk within their walls would have done all things he could and dared, in order to restore the Supremacy of the Pope. This danger might not

have been adequately met by more equitable measures, as by the reformation of the Monks, by the gradual suppression of Monastic institutions, or by Latimer's suggestion of preserving two or three Monasteries in every County. A brief interval, indeed, was allowed to elapse between the dissolutions of the Greater and Lesser Abbeys; but it might have been deemed politic to commence with the dissolution of 376 Abbeys, as a stepping-stone to further confiscation. Among other reasons for such policy, it may be suggested, that the twenty-eight Abbots and Priors who sat in the House of Lords were to be cajoled, by eulogies on their great and *solemn* Abbeys, into a notion, that by helping to calumniate and ruin their unbefriended brethren, they might exculpate and save themselves.

It is not fair to enlist, on behalf of the Reformation Parliament, arguments in favour of the Dissolution of the Abbeys, the force of which could scarcely have been felt in the reign of Henry VIII., though they may satisfy us that this Parliament provided happily for posterity. Monastic institutions to the extent to which they prevailed, seem incompatible with the general profession of the Protestant faith. The enormous power vested in Monasteries, owing to their vast possessions, may be thought highly inexpedient to be placed in the hands of any persons bound together by peculiar ties, and, particularly of churchmen, Catholic or Protestant. The accumulation of the fee-simple of a fourth or fifth part of the lands of the kingdom by corporations holding their possessions in trust was an impediment to the free circulation of real property, and, therefore, very obstructive to its improvement, to the advantageous distribution of capital, and to the development of national industry.

In every argument advanced in justification of the dissolution of Monasteries, it must be assumed, not only that it shews the measure to have been pregnant with good, but that the good preponderated over the evils resulting from the extinction of all the beneficial services rendered to the community by the Mo-

nasteries, and from the infraction of the laws of property¹. Both these evils bore a very different aspect in the reign of Henry VIII., from what they might present in the present day. The destitution of this Country in many of the appliances of social life which has long disappeared, was, for centuries, remedied or alleviated by Monastic institutions in the way of religious duty, or in obedience to the rules of their founders. Again, independently of the spoliation of actual lifeholders, it was, in the age of Henry VIII., to take away one of the chief enjoyments of property, and, consequently, one of the principal incentives to its acquisition, to shake the confidence of proprietors in the security of any provisions they might make out of their possessions, for the health, after their deaths, of their souls, whether they consisted of endowments for such superstitious uses as Henry appointed in his own will, or for dispelling ignorance of the mind, or for curing ailments of the body.

Thirdly. with regard to the consequences of the Act for the Dissolution of the Lesser Abbeys,—it would appear, that, with regard to their personal property, and such of their possessions as were capable of rapine or destruction, a great part of the damage they received was done them, under colour of the Visitations, before any Dissolution Act had passed. The Act under

¹ Sir James Mackintosh, in treating of the Dissolution Acts, gives the following eloquent summary of the uses for which rights of property have been instituted: “Property, which is generally deemed to be the incentive to industry, the guardian of order, the preserver of internal quiet, the channel of friendly intercourse between men and nations, and, in a higher point of view, as affording leisure for the pursuit of knowledge, means for the exercise of generosity, occasions for the returns of gratitude; as being one of the ties that bind succeeding generations, strengthening domestic discipline, and keeping up the affections of kindred; above all, because it is the principle to which all men adapt their plans of life, and, on the faith of whose permanency every human action is performed, is an institution of so high and transcendent a nature, that every government which does not protect it, nay, that does not rigorously punish its infraction, must be guilty of a violation of the first duties of rulers. The common feelings of human nature have applied to it the epithets of sacred and inviolable.” Mr Hallam draws a distinction between private property and that of Corporations, which is, perhaps, not satisfactory.

review, very shortly after its passing, was the principal occasion of two insurrections. The second was called the “Pilgrimage of Grace;” it was of a formidable character, and was finally quelled by means of an amnesty, which the King broke, and of promises, which he never performed. Of the six demands made upon the Crown in these insurrections, the first was that the Religious Houses should be restored ; a circumstance which indicates that, in the neighbourhood of many of the Monasteries, where the characters and habits of their inmates were best known, the calumniatory Reports of the Visitors, though adopted by the King and Parliament, were not re-echoed.

Among the various consequences of the Dissolution of the Abbeys which are treated of by modern writers, and particularly by Mr Hallam, in his *Constitutional History*, there is no one of such importance, in the early stages of the Reformation, as the creation of a Protestant title to lands. It may be questioned, however, whether that historian is justified in attributing the distribution of a large part of the Abbey-lands by Henry among his courtiers, to his “thoughtless humour,” and in suggesting that Henry VII. would, probably, have retained them in his own hands, in order to render himself independent of Parliament. It may seem that Henry VIII. acted therein with judicious policy, if he was not rather compelled by necessity. Burnet notices that the nobility and gentry used to provide for their younger sons in religious houses, and complained much of the injury they sustained by the Acts of Dissolution—till they got the lands. Besides, a participation in the spoils of the Monasteries, at the time of formidable insurrections to restore them, was a politic bait to secure partizans interested in their suppression. And there is reason to believe that, the King throughout his quarrel with the Pope, had instigated agents in and out of Parliament, by express or implied promises of Monastic plunder ; his demands on the consciences of those agents were too exorbitant to be gratuitously obeyed.

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Mr Hallam treats, as an ungrounded prejudice, the notion “that the alms of Monasteries maintained the indigent throughout the kingdom, and that the system of parochial relief was rendered necessary by the dissolution of those beneficent institutions.” A recent historian designates this notion as a “foolish dream.” The same writer also dwells eulogistically on the Vagrant Act of this Session, of which the barbarities have been noticed in a previous chapter, as the “*first result* of the suppression of the Monasteries.”

The alms of the Monasteries had, probably, been administered in a blind eleemosynary spirit, and had a tendency to promote that vagabond mendicity which, owing to the decay of the feudal system, and other causes, had been a national evil of long standing: but the Abbeys may be reasonably conjectured to have taken off more of the burden of real pauperism than was to be expected of voluntary contributors, not bound by custom and religious obligations; the hundred and ten dissolved Hospitals, especially, may not be readily credited to have relieved none who deserved relief. However this may have been, it seems undeniable, that the pauper population must have been largely augmented by the expulsion of fifty thousand monks, unaccustomed to the active exertions of industry, and thrown among the busy crowd, from whose manners and modes of life they had been estranged by a long seclusion from the world¹. We learn from Strype, that the new proprietors of the Abbey-lands treated the old tenants, with whom they had no sympathy, very harshly, and reduced many of them to a state of destitution; the monks had the character of being easy landlords.

¹ In a case mentioned by Burnet where the highest pensions were allowed thirty monks had pensions assigned, but thirty-eight religious persons were dismissed with an allowance, *amongst* them, of £80. 13*s.* 4*d.* Besides these were 144 servants, who were merely paid up arrears of wages. It was only those in priest's orders to whom any pensions were assigned; the pensioners had much difficulty in getting their annual pittance. See the authorities in the Introduction to Brodie's *British Empire*.

A compulsory Poor Law may, in the opinion of many, appear to have been expedient at the beginning of the reign, or earlier: we find, however, soon after the Dissolution Acts, a statute passed in the first year of Edward VI., whereby Bishops were empowered, in their Courts, to punish such as should refuse to contribute alms. A temporary statute in the 14th year of Elizabeth was the first that enforced such contributions by temporal pains. The permanent statute for the compulsory relief of the poor (43 Eliz. c. 2), from its having occurred sixty years later than the dissolution of the Greater Abbeys, may, perhaps, have led writers to dissociate the dissolution of the Monasteries from the necessity for compulsory relief of the poor in a wider manner than facts altogether justify¹.

With regard to the so-called *first result* of the first Act of Suppression, the inhuman Vagrant Law passed in the same Session, though, perhaps, not strictly a *result*, inasmuch as it is an earlier chapter, was, very probably, designed in contemplation of an approaching accession to the numbers of the destitute from a multitude of expelled monks. It is related, in a letter of this period, that Cranmer, Archbishop of Canterbury was "at full point for friars and country priests," and that one of the friars told him, it may be thought, with much reason, that "they had good trust that they should serve forth their lifetimes;" upon which Cranmer, alluding to the penalties of the Vagrant Laws, unfeelingly replied, "they should serve it out at a cart²."

The so-called *first result* of the Act of suppression was a prelude to many results having the same object, and equally or more shocking to humanity. One example of such results may

¹ Harrison, who published in 1577, a quarter of a century before the statute of Elizabeth, writes: "The better-minded do forsake the realm altogether, and seek to live in other countries, as France, Germany, Barbary, Muscovy, and very Calicute, complaining of no room to be left for them at home. Yet the greater part, commonly, having nothing to stay upon, do either prove idle beggars, or else continue stark thieves, till the gallows do eat them up."

² Papers on the suppression of Monasteries, cited in Froude's *History*.

suffice, viz. the Act of 1547 (passed a few years after the last of the Dissolution Acts), whereby Vagabonds were adjudged to be the *slaves* of any one who presented them to a Justice for two years, and to have the letter V imprinted on their breasts with a red-hot iron. If any such slave ran from his master, and was absent for fourteen days, he was to become his master's slave for life, after being branded, on the forehead or cheek, with the letter S. If he ran away a third time, he was to suffer death as a felon. The master, throughout the slavery, "only giving the slave bread and water, or small drink, and such refuse of

Mr Hallam, in his review of the consequences of the Dissolution Acts, has not adverted to that important circumstance resulting from them, of rendering land, to a much greater extent than previously, an article of commerce. This consequence may seem to have occasioned the speedy enactment of several good laws for the transfer and enjoyment of real property; in the very next year after the Act passed for the dissolution of the greater monasteries, there were enacted the statutes of wills, of limitations, of fines, for conveyances of tithes, for lessees of tenants in

tail, for executions upon lands, for partitions, for disseisins, for grantees of reversions, for collusive recoveries, for arrearages of rent claimable by executors, for buying of titles;—a goodly array of improvements which may not seem to have been fortuitous.

Modern writers do not appear to have paid attention to another remarkable consequence of the dissolution of abbeys, that of its promoting the extinction of villenage¹. Sir Thomas Smith, in his *Commonwealth of England*, published by him in the reign of Elizabeth, thus writes, “Vpon this scruple, in continuance of time, and by long succession, the holy Fathers, Monkes and Friers, in their confessions, and specially in their extreame and deadly sicknesses, burdened the consciences of them whom they had vnder their hands: so that temporall men by little and little, by reason of that terror in their conscience, were glad to manumitte all their villains: but the said holy Fathers, with the Abbots and Priors, did not in like sort by theirs, for they had also conscience to empouerish and dispoile the Church so much as to manumit such as were bond to their Churches, or to the Manors which the Church had gotten, and so kept theirs still. The same did the Bishops also, till at the last, and now of late, some Bishops (to make a peece of money) manumitted theirs, partly for argent, partly for slanders, that they seemed more cruell than the temporality: after the Monas-

¹ In the foregoing remarks Sir Thomas Smith has not noticed some causes which co-operated with death-bed manumissions in the extinction of villenage; in this very reign, in the 12th year of Henry VIII., a Lord obtained a writ ordering the Sheriff of London to seize two of his villeins; but the Sheriff returned a custom of London, that every man in the legiance of the King who should have been commorant in the city for the space of a year and a day, si interim de nulla villona, nativa vel servili conditione fuerit defamatus nec calumniatus, solebat totam vitam suam, si voluerit, *ibidem*, secure et pacifice tradere et exercere, which excuse was allowed to the Sheriff, after the Judge had inspected the clause of Magna Charta, *quod Civitas London habeat libertates suas integras, & illas.* Moore's *Rep.* p. 2. (This case was not added to earlier notices, in this book, opposed to the position of a recent historian, that “Villenage, in the reign of Henry VIII., had, for some time ceased,” because it only shews that a Lord claimed villeins, and that his claim was met by a local custom.)

teries *comming into temporall mens hands*, haue beeene occasion
that now they be almost all manumitted."

One consequence of the Dissolution of the Abbeys the Author
is in private duty bound to commemorate, the foundation, by Henry
VIII., of Trinity College, Cambridge. It would have been well
for the fame of Henry, if historical justice would allow us to
forget all his actions, save, as in the language of Gray, that
charity which lives beyond the grave. It can scarcely be
deemed probable, that if King's Hall, and Michael House, and
Oving's Inn¹, part of the confiscations out of which Henry
compounded that College,

So famous,

So excellent in art, and still so rising,

had stood to this day, they would have produced, among their
cowled worthies, names equal in renown with a Bacon and a
Newton, to whom theologians will add a Barrow, and lawyers,
a Coke.

¹ *Fiswick's Hostel* was also a part of what was compounded into Trinity College: but this had belonged to Gonville Hall, which, under the modern designation of Caius College, continues a nursery of refined wits. Henry, in his characteristic way, compelled the Master and Fellows of Gonville Hall to surrender Fiswick's Hostel, allowing them £3 a year in lieu thereof, "till he should give them better satisfaction;" at which, writes Fuller, in 1655, the "Gonvilians still grumble;" their grumbling has not subsided in 1859. Henry, among his endowments of Trinity College, included the rectories of his favourite Hitchin, and of its adjacent parish, the beautiful St Ippollitt's.

A P P E N D I X.

THIS APPENDIX CONTAINS

I. A COLLATED TRANSCRIPT OF THE INDICTMENT PREFERRED
AGAINST SIR THOMAS MOORE.

II. A COLLATED TRANSCRIPT OF THE INDICTMENT PREFERRED
AGAINST QUEEN ANNE BOLEYN IN THE COUNTY OF MIDDLESEX.

III. A STATEMENT OF THE VARIATIONS IN THE INDICTMENTS
PREFERRED AGAINST QUEEN ANNE BOLEYN IN THE RESPECTIVE COUN-
TIES OF KENT AND MIDDLESEX.

IV. OBSERVATIONS ON THE INDICTMENTS PREFERRED AGAINST
QUEEN ANNE BOLEYN.

The Author is desirous of taking this opportunity of expressing his obligations to Sir Francis Palgrave for facilitating his researches in the office of Public Records ; he was prepared to expect, as he found, that one who had made important contributions to the elucidation of the early constitution of the country, would be willing to promote the inquiries of others upon the same subject. The Author's thanks are, also, due to H. T. Riley, Esq. M.A. for the aid of his well-known experience in the transcription and collation of Records.

APPENDIX.

I.

INDICTMENT OF SIR THOMAS MORE

JURATORES præsentant quod cum per quendam actum in Parlamento Domini nostri Regis nunc apud Londonias tertio die mensis Novembris anno regni sui vicesimo-primo inchoato, et abinde eodem tertio die Novembris usque ad villam Westmonasterii in Comitatu Middlesexiæ prorogato, et postea per diversas prorogationes usque ad et tertium diem Novembris anno regni sui vicesimo sexto continuato, et tunc apud dictam villam Westmonasterii tento, editum, inter cætera auctoritate ejusdem Parlamenti inactitatum sit. Quod idem Dominus Rex hæredes et successores sui, hujus regni Reges accepti, acceptati, et reputati, erunt unicum Supremum Caput in terrâ Anglicanæ Ecclesiæ, habebuntque et gaudebunt annexum et vinculum Imperiali coronæ hujus regni tam titulum et stilum inde quam omnia honores, dignitates, præminentias, jurisdictiones, privilegia, auctoritates, immunitates, commoda, et commoditates dictæ dignitati supremi capitatis ejusdem Ecclesiæ incumbentia et pertinentia —prout in eodem Actu inter alia plenius continetur. Cumque etiam per quendam alterum actum in dicto Parlamento, dicto anno vicesimo sexto tento, editum, inter cætera inactitatum sit, quod si aliqua persona aut aliquæ personæ post primum diem Februarii tunc proxime sequentem malitiose optaverit, voluerit, seu desideraverit per verba vel scripta, aut arte imaginaverit, inventaverit, practicaverit sive attemptaverit aliquod damnum corporale fiendum aut committendum regalissimæ personæ Domini Regis, Reginæ, aut eorum hæredibus apparentibus, vel ad deprivandos eos aut eorum aliquem de dignitate, titulo, seu nomine regalium statuum suorum. Quod quælibet talis persona et personæ, sic offendentes in aliquo præmissorum, post dictum primum diem Februarii, atque eorum auxilia-

tores, consentores, consiliarii, et abbettatores, inde legitime convicti existentes, secundum leges et consuetudines hujus regni, adjudicabuntur proditores, eo quod quælibet talis offensa in aliquo præmissorum quæ committeretur aut fieret, post dictum primum diem Februarii reputabitur, acceptabitur, et adjudicabitur alta proditio; et offensores in eisdem, ac eorum auxiliatores, consentores, consiliarii, et abbettatores, legitime convicti existentes de aliqua tali offensa qualis prædictetur, habebit et patietur tales poenas mortis et alias penalitates quales limitatæ sunt et consuetæ in casibus altæ proditionis, prout in dicto altero actu manifeste patet—Quidam tamen Thomas More, nuper de Chelchehithe, in Comitatu Middelsexiæ, Miles, Deum præ oculis non habens, sed instigatione diabolica seductus, septimo die Maii, anno regni dicti Domini Regis vicesimo septimo, statutorum prædictorum satis sciolas, false, proditorie, et malitiose apud Turrim Londoniarum, in Comitatu prædicto, imaginans, inventans, practicans, et attemptans, atque volens et desiderans, contra legiantiæ sue debitum, præfatum serenissimum Dominum nostrum Regem de dignitate, titulo, et nomine status sui regalis, videlicet de dignitate, titulo, et nomine suis Supremi Capitis in terra Anglicanæ Ecclesiæ, deprivare, dicto septimo die Maii, apud dictam Turrim Londoniarum, in Comitatu prædicto, coram Thoma Crumwelle, Armigero, primario secretario Domini Regis, Thoma Bedylle, clero, Johanne Tregonnelle, Legum Doctore, Consiliariis dicti Domini Regis, et coram diversis aliis personis ejusdem Domini Regis veris subditis, per mandatum ipsius Domini Regis examinatus et interrogatus, an ipse eundem Dominum Regem Supremum Caput in terra Ecclesiæ Anglicanæ accipiebat, acceptabat, et reputabat, et eum sic accipere, acceptare, et reputare vellet, secundum formam et effectum statuti prædicti prius recitati, idem Thomas, ad tunc et ibidem, malitiose penitus ¹cilebat, responsumque directum ad illud interrogatorium facere recusabat, et hæc verba Anglicana sequentia dictis Domini Regis veris subditis aitunc et ibidem edicebat: videlicet—“I wyll’ not medyll’ with’ any such’ maters, ffor I am fully determyned’ to serve God’, and to “thynke upon’ His Passion’ & my passage oute of this world’—”

¹ Sic cilebat.

Posteaque, videlicet duodecimo die dicti mensis Maii, anno vicesimo septimo supradicto, prefatus Thomas More, sciens quendam Johannem Fissher clericum, tunc et diu antea in dicta Turre Londoniarum pro diversis grandibus mesprisionibus per ipsum Johannem erga dicti Domini nostri Regis regiam majestatem perpetratis fore incarceratum et detentum, ac per dictos Domini Regis veros subditos, de ejus acceptione, acceptatione, et reputatione ejusdem Domini Regis in præmissis fuisse examinatum, eundemque Johannem Fissher falso, proditorie, et malitiose, expresse negasse præfatum Dominum Regem sic accipere, acceptare et reputare supremum caput in terra Ecclesiæ Anglicanæ fore. Idemque Thomas More, existimans seipsum et præfatum Johannem Fissher de præmissis aliis ex verisimili tunc fore examinandos et interrogandos, diversas litteras, dicto duodecimo die Maii apud dictam Turrem Londoniarum, in prædicto comitatu, Middlesexiæ, contumando malitiam suam prædictam, false, malitiose, et proditorie scripsit; easque præfato Johanni Fissher, in dicta Turre Londoniarum tunc existenti porrexit, et per quendam Georgium Golde eisdem die, anno, et loco transmisit et deliberari fecit—per quas quidem litteras prædictus Thomas More false, malitiose, et proditorie præfato Johanni Fissher, in dicta ejus falsa proditione, consulebat et consentiebat; et per easdem intimans eidem Johanni dictam ¹cilentiam quam idem Thomas More, ut præfertur, interrogatus, habuisset, responsumque suum negatim in verbis Anglicanis suprascriptis, expressis verbis scriptis revelans, et insuper per easdem litteras false, proditorie, et malitiose scribens et asserens hæc verba Anglicana, videlicet—“The act of Parlement” (dictum actum posterius recitatum innuens) “is like a sword’ with’ two edgys, ffor if a ‘man’ answere one wey, it wyll’ confounde his soule, & if he answere ‘the other wey it wyll’ confounde his body.” Postmodumque prefatus Thomas More, metuens ne contingenteret præfatum Johannem Fyssher, in ejus responso, super iterata examinatione ipsius Johannis fienda, prædicta verba per ipsum Thomam eidem Johanni Fissher, ut præfertur, scripta, Consiliariis dicti Domini Regis eloqui, idem Thomas More apud Turrem prædictam, vicesimo sexto die Maii,

¹ Sic silentiam.

anno vicesimo septimo supradicto, per ejus alias litteras scriptas et praefato Johanni Fissher directas, et apud Turrim Londoniarum deliberatas, eundem Johannem Fissher false, malitiose, et proditorie, desiderabat quatenus idem Johannes responsum suum secundum ejus proprium animum faceret, et cum aliquo tali responso quale idem Thomas praefato Johanni Fissher antea scripsisset nullatenus intromitteret, ne forsan dictis Consiliariis Domini Regis occasionem putandi præberet quod aliqualis erat inter eosdem Thomam et Johannem confederatio—Attamen ex dictis litteris praefati Thomae More prius scriptis et dicto Johanni Fissher, ut præmittitur, portrectis et deliberatis, ita insecutum est,—Videlicet, idem Johannes Fissher, per dictas litteras praefati Thomae More false, malitiose, et proditorie doctus et instructus, et exinde quodammodo animatus, postea, videlicet tertio die Junii, anno vicesimo septimo supradicto, apud Turrim Londoniarum predictam per Thomam Audeley Militem, Cancellarium Anglie, Charolum ducem Suffolchiae, Thomam Comitem Wiltescyrse, dicti Domini Regis nobiles subditos et Consiliarios, et alios ejusdem Domini Regis venerabiles subditos et Consiliarios, denuo de præmissis examinatus et interrogatus, penitus cilebat¹, responsumque directum ad id facere nolebat; sed haec verba Anglicana sequentia adtunc et ibidem dictis nobilibus et venerabilibus Domini Regis subditis et Consiliariis false, proditorie, et malitiose edicebat, videlicet,—“I wyll’ not meddyll’ with’ that matter’, for the “statute is lyke a two edgyd’ swerd”; and if I should’ answere one “wey, I should’ offend my consciens; and if I should answer’ the “other wey, I schuld’ putt my liffe yn jeopardy. Wherfore, I wyll’ “make no aunser’ to that matter”—Præfatusque Thomas More similiter, dicto tertio die Junii anno xxvii^o supradicto apud Turrim predictam, per dictos Domini Regis nobiles et venerabiles subditos et Consiliarios iterum de præmissis interrogatus in dicta ejus silentia² false, malitiose, et proditorie adtunc et ibidem perseverabat, directumque responsum ad præmissa facere nolebat—immo, false, proditorie, et malitiose adtunc et ibidem imaginans, inventans, practicans et attemptans, *alique volens et desiderans* praefatum Dominum nostrum

¹ Sic cilebat.² Sic silentia.

Regem de dignitate, titulo, et nomine status sui regalis supradicti deprivare, seditionemque et malignitatem in cordibus verorum subditorum Domini Regis erga eundem Dominum Regem inserere et generare, præfatis nobilibus et venerabilibus dicti Domini Regis subditis et Consiliariis, adtunc et ibidem subsequentia verba Anglicana palam dicebat, videlicet—"The lawe & statute whereby the Kyng' is "made supreme hed', as is aforesaid', be lyke a swerd' with two "edges ; ffor if a man sey that the same lawes be good', then' it is "daungerous to the soule ; and if he say contrary to the seid statute, "then' it is deth' to the body, Wherefore I wyll' make therunto "noon' other' aunswar', because I wyll not be occasion' of the "schortyng' of my liffe." Et insuper Juratores prædicti dicunt, quod præfati Thomas More et Johannes Fisscher, ad eorum supradictum falsum et nephandissimum proditorium propositum celandum, *omnes et omnimodas litteras alterutrum scriptas et deliberatas, et eorum unus et alter, immediate post lecturas earundem combussit.* Et post hæc omnia et singula præmissa, ut præmittitur, peracta et dicta, videlicet duodecimo die Junii, anno vicesimo septimo supradicto, accessit ad præfatum Thomam More in prædictam Turrim Londoniarum *Ricardus Ryche, Generalis Solicitor dicti Domini Regis* ; habitoque adtunc et ibidem inter eosdem Thomam More et Ricardum Riche colloquio de diversis præmissa tangentibus, idem Ricardus Riche caritative movebat præfatum Thomam More quatenus se vellet actibus et legibus suprascriptis conformare. Ad quod idem Thomas respondendo præfato Richardo dicebat—"Conscientia vestra salvabit "vos, et conscientia mea salvabit me;" præfatusque Richardus Ryche, adtunc et ibidem protestans quod tunc non habebat commissionem sive mandatum cum eodem Thoma More de materia illa tractare sive communicare, eundem Thomam More ad tunc et ibidem interrogabat. "Si inactitatum fuisset auctoritate parliamenti quod idem Ricardus "Ryche esset Rex, et quod, si quis id negaret, proditio esset ; qualis "esset offensa in præfato Thoma More, si idem Thomas diceret quod "præfatus Ricardus Ryche erat Rex pro certo"—ulterius dicebat idem Ricardus—"in conscientia ejus quod nulla esset offensa ; sed "quod idem Thomas More obligatus erat sic dicere, et eundem

“ Ricardum acceptare, pro eo quod consensus præfati Thomæ More “ per actum Parliamenti erat obligatus.” Ad quod præfatus Thomas More, ad tunc et ibidem respondendo, dicebat quod ipse offenderet si diceret “ non;” quia obligatus esset per actum, pro eo quod consensum suum ad id præbere potuit—Sed dicebat quod idem casus erit casus levis—Quamobrem idem Thomas adtunc et ibidem præfato Ricardo Ryche dicebat quod ipse alium casum sublimiorem propone-re vellet (sic dicens)—“ Posito quod per Parliamentum inactitatum “ foret, quod Deus non esset Deus, et quod si quis impugnare vellet “ actum illum, foret proditio. Si interrogaretur quæstio a vobis, “ Ricardo Ryche, velitis dicere quod Deus non erat Deus? (accor-dante Statuto) et si sic diceretis, non offenderetis?” Ad quod idem Ricardus respondens præfato Thomæ More adtunc et ibidem dicebat —“ Immo, pro certo—quia impossibile est fiendum quod Deus non “ esset Deus. Et quia casus vester adeo sublimis existet, proponam “ vobis hunc casum mediocrem, videlicet—Novistis quia Dominus “ noster Rex constitutus est supremum caput in terra ecclesie An-glicanæ; et quare non deberetis vos, Magister More, eum sic affir-mare et acceptare, tam sic quam in casu præmisso quo ego præ-fectus eram Rex? in quo casu conceditis quod obligaremini sic me “ affirmare et acceptare Regem.” Ad quod, præfatus Thomas More false, proditorie, et malitiosa, in dictis ejus proditione et malitia perseverans, prædictumque ejus proditorum et malitiosum propoauit et appetitum proferre et defendere volens, præfato Ricardo Ryche adtunc et ibidem sic respondebat; videlicet, “ Quod casus illi non “ erant consimiles; quod Rex per Parliamentum fieri potest et per “ Parliamentum deprivari potest; ad quem actum quilibet subditus, “ ad Parliamentum existens, suum præbet consensum; sed ad pri-matice casum subditus non potest obligari, quia *consensum suum ab eo ad Parliamentum præbere non potest*: et quamquam Rex sic “ acceptus sit in Anglia, plurimæ tamen partes exteræ idem non “ affirmant.”—Sicque Juratores prædicti dicunt quod præfatus Thomas More false, proditorie, et malitiosa arte *imaginavì, inventavì, practicavì, et attemptravì* præfatum serenissimum Dominum nostrum Regem de dictis dignitate, titulo, et nomine supradicti status sui

regalis, videlicet de dignitate, titulo, et nomine suis supremi capitisi in terra Anglicana Ecclesiae penitus deprivare—in ipsius Domini Regis contemptum manifestum et coronæ sue derogationem, *contra formam et effectum statutorum prædicatorum*, et contra pacem ejusdem Domini Regis.

II.

INDICTMENT OF QUEEN ANNE BOLEYN.

RECORDUM ac Indictamenta et processus versus præfatam Dominam Annam, Reginam Angliæ, et Georgium Boleyne, Dominum Rochedorfe, de alta proditione coram præfatis Johanne Baldewyne, milite, Ricardo Lyster milite, et sociis suis Justiciariis etc. in Comitatu Middelsexiæ capta, et per manus suas proprias hic in curia deliberata, sequuntur in hæc verba—

Midd. Inquisitio capta apud villam Westmonasterii in Comitatu prædicto die Marcurii¹ proximo post tres septimanæ Paschæ, anno regni Regis Henrici octavi vicesimo octavo coram Johanne Baldewyne milite, Ricardo Lyster milite, Johanne Porte milite, Johanne Spelman milite, Waltero Luke milite, Antonio Fitzherbert milite & Willemo Shelley milite, Justiciariis Domini Regis per litteras patentes ipsius Regis, eis ac aliis directas, ad inquirendum per sacramentum proborum et legalium hominum de dicto Comitatu Middelsexiæ, tam infra libertates quam extra, per quos rei veritas melius sciri poterit, de quibuscumque proditionibus, mesprisionibus proditionum, rebellionibus, felonis, murbris, homicidiis, riotis, routis, conventiculis illicitis, insurrectionibus, extorsionibus, oppressionibus, contemptibus, concelamentis, ignorantibus, negligentibus, offensis, mesprisionibus, falsitatibus, deceptionibus, confederationibus, conspirationibus, necnon accessariis eorundem, ac aliis transgressionibus et offensis quibuscumque, infra Comitatum prædictum per quoscumque habita, facta, perpetrata, sive commissa. Quibus ad easdem proditiones et alia præmissa secundum legem et consuetudinem regni Angliæ audienda et terminanda assignatis, per sacramentum Egidii Herone armigeri,

¹ Sic.

Roger More armigeri, Ricardi Awnsham armigeri, Thomæ Ballyngtonē armigeri, Gregorii Lovelle, Johannis Worsope armigeri, Willelmi Goddard gentylman, Willelmi Blakwalle gentylman, Johannis Wyforde gentylman, Willelmi Berd gentylman, Henrici Hubbylthorne gentylman, Willelmi Hunyng gentylman, Roberti Walys gentylman, Johannis Englond gentylman, Henrici Lodysmane gentylman, et Johannis Averey gentylman, extitit præsentatum.

Quod cum Domina Anna, Regina Angliae, uxor Domini nostri Henrici Octavi, Dei gratia Angliae et Francie Regis, Fidei Defensoris,¹ et Domini Hibernie et in terra supremi capitis Ecclesiae Anglicane per tempus trium annorum modo plenarie elapsorum, et amplius, extitit; eademque Domina Anna Regina nedum excellentissimum atque nobilissimum matrimonium inter dictum Dominum nostrum Regem et ipsam Dominam Reginam solempnizatum vilipendens, verumetiam maliciam in corde suo erga dictum Dominum nostrum Regem gerens, instigatione diabolica seducta, Deum p̄œ oculis non habens, atque ejus fragilem et carnalem appetitum indies insequens et affectans, quamplures præfati Domini nostri Regis diurnos et familiares servos eidem Reginæ adulteros et concubinos fore et efficere, falso, proditorie, et contra legiantissimæ sue debitum, turpibus colloquiis et osculis, tactis, donis, variisque aliis nephandissimis¹ ejus instigacionibus, et incitationibus, de tempore in tempus, sicuti ejus criminis facultas abolendissima appetit, falsissime et proditoriosissime procuravit—Adeo quod ad illud ejusdem Reginæ nequissimum et proditoriosissimum crimen adulterii perpetrandum nonnulli dicti Domini Regis servientes, per dictæ Reginæ vilissimam provocationem et incitationem, indies eidem Reginæ proditorie erant dediti et inclinati, hinc indeque, sic ut subsequitur, de factis et proditoris verbis insecura fuit,—Videlicet, prædicta Regina, sexto die Octobris, anno regni prædicti Domini nostri Regis vicesimo-quinto, apud Villam Westmonasterii in comitatu prædicto, et diversis aliis diebus et vicibus antea et postea, quendam Henricum Noreys, nuper de villa Westmonasterii in Comitatu prædicto, Armigerum, unum Generosorum private Camere ejusdem Domini Regis, ad ipsam Reginam violandam et carnaliter cognoscendam dulcibus verbis, osculis, tactibus,

¹ Sic nephandissimus.

ac aliis viis et modis illicitis proditorie procurabat et incitabat; per quod idem Henricus Noreys duodecimo die Octobris, anno regni dicti Domini Regis vicesimo-quinto, occasione dictæ Domine Reginæ proditorie incitationis et procurationis eandem Dominam Reginam, contra legiantis sue debitum, apud Villam Westmonasterii prædictam, in Comitatu prædicto, proditorie violabat, vitiabat, et carnaliter cognoscebat. Quodque idem Henricus Noreys diversis aliis diebus ac vicibus, antea et postea, apud villam Westmonasterii prædictam in Comitatu prædicto, quandoque ex procuratione ipsius Henrici propria præfatae Reginæ, proditorie ibidem facta, et quandoque ex procuratione ipsius Reginæ eidem Henrico Noreys proditorie ibidem facta, præfatam Reginam proditorie violavit, vitiavit, et carnaliter cognovit. Et quod prædicta Regina, secundo die Novembria, anno regni Dicti Domini Regis vicesimo-septimo, et diversis aliis diebus et vicibus antea et postea, apud villam Westmonasterii prædictam, in Comitatu prædicto, quendam Georgium Boleyne, nuper de Villa Westmonasterii, in Comitatu prædicto, militem, Dominum Roche-forde, fratrem naturalem præfatae Reginæ, ac unum generosorum dictæ privatae Camere dicti Domini Regis, ad ipsam Reginam violentiam et carnaliter cognoscendam, ac cum lingua ipsius Reginæ in ore dicti Georgii et lingua ipsius Georgii in ore dictæ Reginæ, tam osculis cum aperto ore ipsius Reginæ et Georgii, donis et jocalibus, ac quam aliis viis et modis illicitis proditorie procurabat et incitabat, per quod idem Georgius, Dominus Roche-forde omnimoda Dei Omnipotentis præcepta et singulas humanæ naturæ leges spernens, prædictæ Reginæ illecebras et incontinentias intuens et cognoscens, quinto die Novembria, anno Regni dicti Domini Regis vicesimo-septimo, eandem Reginam, sororem suam naturalem, false, detestantissime, et proditoriosissime, contra legiantis sue debitum, apud villam Westmonasterii prædictam, in Comitatu prædicto, violabat et carnaliter cognoscebat. Quodque idem Georgius diversis aliis diebus et vicibus, antea et postea, apud Villam Westmonasterii prædictam, in Comitatu prædicto, quandoque ex procuratione ipsius Georgii propria præfatae Reginæ, ibidem proditorie facta, et quandoque ex procuratione ipsius Reginæ, eidem Georgio ibidem proditorie facta, præfatam Reginam proditorie violabat, vitiabat, et carnaliter cognoscebat.

Et quod predicta Regina tertio die Decembris anno regni dicti Domini nostri Regis vicesimo quinto, et diversis aliis diebus et vicibus, antea et postea, apud Villam Westmonasterii predictam, in Comitatu predicto, quendam Willelmum Bryertone, nuper de Villa Westmonasterii in Comitatu predicto, Armigerum, ac unum generosorum dictae Private Camere prefati Domini Regis, ad ipsam Reginam violandam et carnaliter cognoscendam osculis, tactibus, ac aliis diversis viis et modis illicitis proditorie procurabat et incitabat—per quod idem Willelmus Bryertone, octavo die Decembris, anno regni dicti Domini Regis vicesimo-quinto proditorie, occasione dictae Dominæ Reginæ proditoriae incitationis et procuracyonis, eandem Reginam contra legiantæ sue debitum, apud Hamptone Court, in parochia de Litolhamptone, in Comitatu predicto, proditorie violabat, vitiabat, et carnaliter cognoscebat. Quodque idem Willelmus Bryertone diversis aliis diebus et vicibus, antea et postea, apud villam Westmonasterii predictam, in Comitatu predicto, quandoque ex procuracyone ipsius Willelmi propria prefata Reginæ ibidem proditorie facta, et quandoque, ex procuracyone ipsius Reginæ, eidem Willelmo ibidem proditorie facta, prefatam Reginam proditorie violabat, vitiabat, et carnaliter cognoscebat. Et quod predicta Regina, octavo die mensis Maii, anno regni dicti Domini nostri Regis vicesimo-sexto, et diversis aliis diebus et vicibus, antea et postea apud villam Westmonasterii predictam in Comitatu predicto quendam Franciscum Westone, nuper de villa Westmonasterii, in Comitatu predicto, militem, ac unum Generosorum dictæ private Camere prefati Domini Regis, ad ipsam Reginam violandam et carnaliter cognoscendam osculis, verbis, donis, ac aliis viis et modis illicitis proditorie procurabat et incitabat; per quod idem Franciscus Westone vicesimo die mensis Maii, anno regni dicti Domini Regis vicesimo-sexto proditorie, occasione dictæ Reginæ, proditoriae incitationis et procuracyonis eandem Dominam Reginam, contra legiantæ sue debitum, apud villam Westmonasterii predictam, in Comitatu predicto, proditorie violabat, vitiabat, et carnaliter cognoscebat. Quodque idem Franciscus Westone, diversis aliis diebus et vicibus, antea et postea, apud villam Westmonasterii predictam, in Comitatu predicto, quandoque ex procuracyone ipsius Francisci propria prefata Reginæ, proditorie ibidem facta, et quandoque ex

procuratione ipsius Reginæ eidem Francisco Westone proditorie ibidem facta, prefatam Reginam proditorie violabat, vitiabat, et carnaliter cognoscebat. Et quod predicta Reginæ, duodecimo die mensis Aprilis, anno regni dicti Domini Regis vicesimo-sexto, et diversis aliis diebus et vicibus, antea et postea, apud villam Westmonasterii predictam, in Comitatu predicto, quendam Marcum Smetone, nuper de villa Westmonasterii in Comitatu predicto, gentylmanne¹, ac unum Gromettorum dictæ private Cameræ dicti Domini Regis, ad ipsam Reginam violandam et carnaliter cognoscendam, tam osculis et tactibus, quam donis pecuniae et jocallium, et aliis diversis viis et modis illicitis, proditorie procurabat et incitabat, per quod idem Marcus Smetone vicesimo-sexto die mensis Aprilis, anno regni dicti Domini Regis vicesimo-septimo proditorie, occasione dictæ Domine Reginæ proditorie incitationis et procurationis eandem Dominam Reginam, contra legiantissime sive debitum, apud villam Westmonasterii predictam, in Comitatu predicto, proditorie violabat, vitiabat, et carnaliter cognoscebat. Quodque idem Marcus Smetone, diversis aliis diebus et vicibus, antea et postea, apud villam Westmonasterii predictam, in Comitatu predicto, quandoque ex procuratione ipsius Marci propria prefatae Reginæ proditorie ibidem facta, et quandoque ex procuratione ipsius Reginæ eidem Marco Smetone proditorie ibidem facta, prefatam Reginam proditorie violabat, vitiabat, et carnaliter cognoscebat. Et insuper juratores predicti dicunt quod predictus Georgius Boleyne, miles, Dominus Rocheforde, Henricus Noreys, Willelmus Bryertone, Franciscus Westone, et Marcus Smetone, sic carnali amore dictæ Reginæ accensi et inflammati fuerunt, quod quem illorum dicta Regina magis appetiit et affectavit, alias eorum malignabat, et indignabat, et corribus suis invicem murmurabant, alter versus alterum suspiciens et zelotipans, et exinde unus eorum versus alium malitiam concipiens, prefatae Reginæ plurima obsequia nocturnis temporibus inordinatis, diversa etiam dona et arras² dicto proditorio vitio adulterino apta, diversis transactis temporibus, dum dictorum proditoriorum criminum suorum tempora agebant, occulto et proditorie singulatim exhib-

¹ fontylmank.

² rings, or other presents, on betrothals.

buerunt. Et quod præfata Regina pariformiter prædictos Georgium, Henricum, et cæteros proditores prænominatos solos sibi concubinos habere tam ardenter affectavit et concupivit, quod eorum aliquem cum alia quacumque muliere conversare colloquio aut vultum familiarem exhibere minime potuit sustinere, absque calumpnia, disloquentia, et indignatione ipsius Reginæ, eis propterea fiendis et demonstrandis. Et præterea juratores prædicti dicunt quod præfata Reginæ prænominatis Georgio, Henrico, Willelmo, Francisco, et Marco, pro eo quod ipsi eorum adulterina prædicta vitia proditoria cum eadem Regina ad suum libitum et beneplacitum ¹itterarent et vicissim continuarent, diversa dona et mercedes, insignia, tam pro supradictis eorum proditoris vitiis in forma prædicta commissis et peractis quam extunc cum eadem Regina committendis et perpetrandis, apud villam Westmonasterii prædictam in Comitatu prædicto vice-simo septimo die Novembbris, anno regni dicti Domini Regis vicesimo septimo, et diversis aliis diebus et vicibus antea et postea proditorie contulit, dedit, et largita fuit. Quorum prætextu dicta Reginæ præfatos proditores in eorum dictis proditionibus adtunc et ibidem proditorie auxiliavit et confortavit; ulteriusque præfata Reginæ et cæteri proditores prænominati eidem Reginæ per modum dictorum proditoriorum vitiorum divisim adhærentes, videlicet eadem Reginæ et singuli cæteri prænominati proditores, cum eadem Reginæ divisim et invicem, ultimo die mensis Octobris, anno regni dicti Domini Regis vicesimo-septimo supradicto, et aliis diebus et vicibus, antea et postea, apud Villam Westmonasterii prædictam, in Comitatu prædicto, mortem, et destructionem præfati Domini nostri Regis proditorie contra legiantis susæ debitum, compassi fuerunt, et imaginaverunt; ita quod dicta Reginæ sepius dicebat et promittebat se mari-tare unum proditorum prædicatorum quandcumque dictus Dominus Rex ab hoc seculo migrare contingeret, affirmando quod nunquam ipsum Dominum Regem in corde suo diligere volebat. Idemque Dominus noster Rex supradicta falsissima et abolendissima crimina, vitia, et proditiones versus eum, taliter, ut præscribuntur, commissa et perpetrata, infra breve tempus nunc præteritum, summa Dei gratia mediante, agnoscens et perpendens, tantum intra se concepit cordi-

¹ Sic.

alem *ingratitudinem et tristitiam*, præsertim ex ejus dictæ Reginæ et consortis sibi impensa malitia et adulterii proditorii procuratione, atque etiam ex dictorum ejus servorum cubiculariorum dignissimæ suse personæ regis vicinissorum acceptorum collatis proditionibus, quod nonnulla corpori suo regali dampna, gravamina, et pericula exinde sibi acreverunt et devenerunt. *Sicque* præfati juratores dicunt quod præfata Regina et cæteri proditores prænominati proditiones suas præscriptas, ut præmittitur, false et proditorie commiserunt, et perpetraverunt in dicti Domini nostri Regis, coronæ suse regis, et totius regni sui Anglie contemptum manifestum et derogationem, et regalis personæ et corporis dicti Domini Regis *periculum* ac in proditorium¹, scandalum, periculum, detrimentum, et derogationem *exitium* et haeredum dictorum Domini Regis et Reginæ, et contra pacem ejusdem Domini Regis, etc.

III.

INDICTMENT OF QUEEN ANNE BOLEYN. KENT.

(VARIATIONS.)

[*Inquisition at Deptford, taken on Thursday, 11th May,
28th Henry VIII.*]

VIDE LICET prædicta Regina duodecimo die Novembris anno regni prædicti Domini nostri Regis vicesimo-quinto apud Estgrenewiche in Comitatu prædicto et diversis—Henricus Noreys nuper de Estgrenewiche in comitatu prædicto Armigerum — procurabat et incitabat; per quod idem Henricus Noreys decimo-nono die Novembris dicto anno regni Domini regis — dictam Reginam— apud Estgrenewiche — carnaliter cognoscebat. Quodque idem Henricus Noreys diversis aliis diebus et vicibus postea et antea apud Estgrenewiche—ex procuratione ipsius Henrici— — prædictam Reginam carnaliter cognovit. Et quod prædicta Regina vicesimo-secundo die Decembris, anno regni—vicesimo-septimo et diversis aliis diebus et vicibus antea et postea apud Eltham' in Comitatu prædicto quendam Georgium Boleyne nuper de Estgrenewiche—ad ipsam

¹ *Sic.*

Reginam — carnaliter cognoscendam — incitabat, per quod idem Georgius — *vicesimo-nono* die Decembris, dicto anno — vicesimo-septimo — reginam — apud Eltham' predictum — carnaliter cognoscebat. Quodque idem Georgius diversis aliis diebus et vicibus postea et antea apud Estgrenewiche — ex procuratione ipsius Georgii — Reginæ — reginam — carnaliter cognoscebat. Et quod predicta Regina *sesto decimo* die Novembris, anno regni — vicesimo quinto supradicto, et diversis aliis diebus — antea et postea *apud Estgrenewiche* — Willelmum Bryerton', nuper de Estgrenewiche — ad ipsam Reginam — carnaliter cognoscendum — incitabat; per quod idem Willelmus *vicesimo septimo* die *Novembris*, anno regni — vicesimo quinto — occasione — Reginæ — Reginam — apud Estgrenewiche carnaliter cognoscebat. Quodque idem Willelmus Bryerton' diversis aliis diebus — antea et postea apud Estgrenewiche — ex procuratione ipsius Willelmi propria præfatae Reginæ — Reginam — carnaliter cognoscebat. Quodque predicta Regina *sesto* die *Junii* anno regni *vicesimo-sexto*, et diversis aliis diebus — antea et postea, apud *Estgrenewiche* — quendam *Franciscum Weston'*, nuper de Estgrenewiche — ad ipsam Reginam — carnaliter cognoscendam — incitabat; per quod idem Franciscus Weston' *vicesimo die Junii, dicto anno regni* — Reginam — apud Estgrenewiche — carnaliter cognoscebat. Quodque idem Franciscus Weston' diversis aliis diebus — antea et postea apud Estgrenewiche — ex procuratione ipsius Francisci propria præfatae Reginæ — Reginam — carnaliter cognoscebat. Et quod predicta Reginæ *tertio decimo* die *Maii*, — anno regno *vicesimo-sexto* et diversis aliis diebus — antea et postea, apud Estgrenewiche — quendam Marcum Smeton', nuper de Estgrenewiche — Gentlyman' ac unum — ad ipsam Reginam — carnaliter cognoscendam incitabat; per quod idem Marcus Smeton' *decimo-nono die Maii* dicto anno regni — Reginam — apud Estgrenewiche carnaliter cognoscebat. Quodque idem Marcus Smeton' diversis aliis diebus — postea et antea, apud Estgrenewiche — ex procuratione ipsius Marci propria præfatae Reginæ — Reginam — carnaliter cognoscebat.

IV.

OBSERVATIONS ON THE INDICTMENTS PREFERRED
AGAINST QUEEN ANNE BOLEYN.

SOME observations have been offered on the subject of the Indictments preferred against Queen Anne Boleyn, in the chapter concerning the Royal Succession. A few additional remarks are here appended which have been suggested by an inspection of the Records, or for which the present may seem the most convenient place.

As it is believed that the two Indictments preferred against Queen Anne Boleyn have not hitherto been collated, it may be proper to notice a few particulars illustrative of their bearing on each other.

The Queen was delivered of the Princess Elizabeth on the 7th of September in the 25th year of the reign; and she is charged with kissing, handling, coaxing, and using other illicit ways and means, in Middlesex, to incite Noreys to violate, and carnally know her; these allurements are dated on the 6th day of the following October, and on different days *before* and afterwards. Noreys is stated to have yielded to the Queen, and to have violated, vitiated, and carnally known her, in Middlesex, on the 12th day of October. There is a separate averment that Noreys carnally knew the Queen on different days before and after the 12th, sometimes by his own procurement, and, sometimes by that of the Queen.—These facts are stated to have been followed, in order, by other occurrences in Kent, differing from the Middlesex siege and capitulation only in the circumstances, that the day of temptation is shifted from the 6th of October to the 12th of November, and the day of transgression from the 12th of October to the 19th of November. Both in Kent and Middlesex about a week is allowed for luring the captive by means of the Queen's tongue and fingers (*dulcibus verbis, osculis, tactibus*).

The next alleged adultery is with Lord Rochford. He is importuned by the Queen, in Middlesex, on the 2nd of November, in the 27th year of the reign (*two years after Noreys had been so tempted*);

in Kent he underwent the same importunity on the 22nd of December; in Middlesex, he succumbed on the 5th of November; in Kent, on the 29th of December. Lord Rochford being the Queen's brother is represented to have fallen under a more energetic assault than his fellow-culprits, for both in Middlesex and Kent the Queen is stated to have put her tongue into his mouth.

Bryerton, Weston and Smeton, are placed in the same order, in both indictments, though, in point of date, their alleged delinquencies preceded that of Lord Rochford. They are said to have been tempted respectively in Middlesex, on the 3rd of December, in the 25th year of the reign, the 8th of May in the 26th year, the 12th of April in the same year, and, in Kent, on the 16th of November in the 25th year, the 6th of June in the 26th year, the 3rd of May in the same year. The forbidden fruit which the modern Eve had pressed them to taste, was tasted, in Middlesex, on the 8th of December, in the 25th year, the 20th of May in the 26th year, the 26th of April in the same year; and, in Kent, on the 27th of November, in the 25th year, on the 20th of June in the 26th year, on the 19th of May in the same year. In both counties, the Queen, as in the instances of Noreys and Lord Rochford, was represented as a moral poisoner, though her poison was, in regard to such matters, a slow one.

The criminal charges reach from the 6th of October, in the 25th year of the reign, to the 29th of December in the 27th year, besides a general allegation of adulteries committed before the earliest, and after the latest, of those dates. The five lovers are represented to have been fully aware of the favours lavished on their rivals, for it is stated that they bore to each other, in consequence, malignity, indignation, suspicion, jealousy, malice. These heartburnings, it would appear, had been excruciating five adulterers during a great part of three years; it must, however, have been consolatory to them, that the Queen, in changing her residence from Middlesex to Kent, did not change, or add to the number of her paramours; and they must have felicitated themselves that the introduction of no new, or sixth, victim of seduction in either county increased the chances of a discovery; seeing that the concealment in palaces, and in the midst of

political and religious foes, of multiplied adulteries with five bickering paramours, during three years, was, of itself, sufficiently marvellous.

We have not distinct information concerning the practice of Grand Juries in the reign of Henry VIII.;—judging from later State Trials, it is probable that the investigation before a Grand Jury of charges preferred by the Government might have been conducted by the Judges in open court, or that a law officer of the Crown might have attended in the Grand Jury room, to explain the indictment, and to marshal, perhaps to comment upon, the evidence; or the Government might have humanely furnished the Grand Jury with an English version, written or oral, of the indictment, made by their own interpreter. Probably the Esquires and Gentlemen of Middlesex and Kent knew only so much of, or for, the indictments against Queen Anne Boleyn as the Government thought convenient to impart to them; the latinity of those records might have posed a Lilley or a Colet.

It has been advanced in favour of the truth of the Indictments against Queen Anne Boleyn, that, “if they were unjust, it stamps the memory of the finders of them with *eternal infamy*;” and, in order to prove that the memory of the Grand Jurors ought not to be stamp’t with eternal infamy, their Christian and surnames are detailed at full length. It is not, here, proposed, and it might be difficult, to track the biographies of very obscure individuals, nor to dwell on the influence of the Crown in the packing of Juries, on the severe punishments for their findings against what the Star Chamber chose to call “manifest evidence,” on the ignorance, at the time, of a Jury of one county, that the same facts had been laid before a Jury of another county, on the possibility that *all* the Grand Jury whose names are paraded may not have concurred in the finding.

But it is to be observed that the function of a Grand Jury is not to *decide* upon guilt or innocence, but simply, and, in the absence of the prisoner and his witnesses, to say whether there are reasonable grounds for calling on an accused party for an answer. With regard to the *law*, it is the duty of Grand Juries to be guided by the instructions of Judges; as to which most lawyers will be of opinion that the

Judges, in the Queen's case, misconstrued the law of treason. ~~W~~ regard to the *facts*, it is equally the duty of Grand Juries, to receive such evidence as the Judges inform them is legal and admissible; ~~as~~ which they would have been instructed, agreeably to the practice of Criminal courts in those times, that they were bound to receive testimony which, in the present day, would be hooted out of every Court in England. It is conceived, therefore, that the Indictments against Queen Anne Boleyn can derive little force from the findings of Grand Juries; for, allowing the Grand Jurors to have been immaculate and undaunted, it must reduce their historical authority to *zero*, that they were governed by the customary, and judicially sanctioned rule of evidence in the reign of Henry VIII. The Grand Juries of Middlesex and Kent might thus have found Bills upon worthless testimony, and yet not have incurred the historian's stigma of "*eternal infamy*." We must not judge of the facts of ancient days by the evidence of those facts customarily admitted in ancient Criminal Courts, merely because we have no other data on which to form our judgments. The two Grand Juries with whose Christian and surnames we have been made acquainted furnish no argument in favour of the Indictments preferred against Queen Anne Boleyn, because we may assume that they were "all honourable men," and yet deem those indictments to be monstrous exhibitions of illegality, chicanery, incredibility, inconsistency, and cruelty.

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